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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,										:	08-CR-640								
v.										:	U.S. Courthouse Brooklyn, New York								
ROBERT SIMELS,										:									
ARINNE IRVING,										:	August 5, 2009								
Defendants.										:	9:30 o'clock a.m.								

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Government: BENTON J. CAMPBELL
United States Attorney
By: STEVEN L. D'ALESSANDRO
MORRIS FODEMAN
DANIEL BROWNELL
Assistant U. S. Attorneys

For the Defendants:

GERALD SHARGEL, ESQ.
EVAN L. LIPTON, ESQ.
For Robert Simels

JAVIER A. SOLANO, ESQ.
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For Arienne Irving

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Proceedings recorded by mechanical stenography, transcript produced by CAT.

1 (Trial resumed.)

2 (In open court; jury not present.)

3 THE COURT: Good morning. Ready?

4 MR. SHARGEL: Ready.

5 MR. D'ALESSANDRO: Your Honor, there's two things we
6 need to deal with initially, if I may.

7 I explained to Mr. Shargel and to Mr. Solano
8 something I wanted to put on the record. I don't think
9 there's any issue that needs to be addressed, but I wanted to
10 put it on the record anyway.

11 This morning on my way to the courtroom, there was
12 an elevator that was open. I got on it. I believe it was
13 Juror No. Six then walked into the elevator, as well. It was
14 obviously an awkward moment for both of us. He said, We can't
15 say hello. I just walked right off and got off the elevator.
16 I want just to put it on the record, and I have advised
17 defense counsel about it.

18 THE COURT: Okay. Thank you.

19 MR. D'ALESSANDRO: The other issue is, do you want
20 to address the letter?

21 MR. SHARGEL: To avoid a sidebar, there's a letter
22 that's on your screen or should be on your screen that we
23 wanted to put into evidence. The government has an objection
24 to it, or at least an objection to parts of it. I'm not quite
25 sure which parts.

1 THE COURT: I can't read it so well. Can you blow
2 it up for me?

3 What's it's all about?

4 MR. SHARGEL: This is a letter to the President of
5 Guyana asking for assistance in uncovering materials -- it's
6 dated August 28, 2008, so it's during the Fineman period --
7 asking for materials to impeach Clark and matters consistent
8 with Mr. Simels's testimony. I think this reflects his
9 then-existing state of mind.

10 It's not offered for the truth of the matters
11 asserted in there. It certainly shows that he was, A, not
12 relying on Fineman, as he testified, not relying on him
13 exclusively, and, B, that the testimony that he's giving here
14 in court is consistently reflected in a document that he wrote
15 at the time, particularly since. I don't think I have to
16 anticipate admissibility under Rule 801, prior consistent
17 statements. I expect that the government might suggest that
18 somehow, that this is some sort of recent fabrication. I
19 don't want to go there at this moment. I think this is
20 admissible just to show his state of mind and what he was
21 doing at the time.

22 THE COURT: Let's take a short time out, so that I
23 can read it.

24 (Pause.)

25 THE COURT: All right.

1 How many pages is it?

2 MR. SHARGEL: I think it's eight pages.

3 (Pause.)

4 THE COURT: Okay. What's the number of this
5 exhibit?

6 MR. LIPTON: 351.

7 THE COURT: Do I have a hard copy of it up here?

8 MR. LIPTON: No, sir.

9 THE COURT: What's the government's view?

10 MR. D'ALESSANDRO: It's obviously hearsay. We think
11 it's cumulative evidence, as well. Your Honor has been
12 permitting notes, reports, letterwriting, all to demonstrate
13 the defendant's state of mind, with limiting instructions as
14 to hearsay. This is more of the same.

15 I don't have a problem with the fact that a letter
16 was written to the President. I don't have a problem with the
17 fact that there were specific requests that were made of the
18 President. I'm not arguing about that. The whole
19 introductory description of the events, and the government
20 doesn't understand the sociological nuances, and the defendant
21 seeks to inflame the jury with this. It's more of the same.
22 It's just cumulative, and I'm just concerned that once --
23 maybe one letter, two letters, three letters, four letters.
24 And I understand that your Honor has been very good about
25 giving instructions. At some point, the jury may disregard

1 the instruction. I just don't see the relevance of it.

2 MR. SHARGEL: Can I say one thing in response?

3 THE COURT: Yes.

4 MR. SHARGEL: The memos of the meetings in Guyana
5 that were admitted for example were earlier. There's another
6 one that I'll introduce from June. This is August 28, this is
7 shortly before the defendants in this case are arrested, and I
8 want to be able to establish that they were not relying on
9 Fineman, they were not relying on Selwyn Vaughn. This shows
10 that they were desperately trying to gather information from
11 any source available to defend the case.

12 THE COURT: Why aren't you just offering the
13 requests for documents? Why are you offering the world
14 according to Bob Simels?

15 MR. SHARGEL: The world according to Bob Simels is
16 relevant to the case. It really is.

17 THE COURT: The probative value, as I understand it,
18 as you've described it, is that they were not relying on
19 Fineman. They were doing all this other stuff, seeking other
20 sources of information.

21 MR. SHARGEL: True.

22 THE COURT: You get that with the document requests;
23 right?

24 MR. SHARGEL: I do get that. But why isn't Bob
25 Simels -- even if he has a viewpoint or world view that is

1 antagonistic to the government, what is the downside? I don't
2 see that it's a 403 issue that weighs in favor of the
3 government.

4 THE COURT: I think Mr. D'Alessandro is exactly
5 right. I think there comes a point where there's a risk that,
6 notwithstanding the reiterated instruction about the limited
7 use to which this information can be put, that these diatribes
8 against the government by Simels might be used for a purpose
9 other than assessing his state of mind.

10 I think the probative value as you've described it
11 is just about 100 percent established by the request for
12 documents.

13 I'll allow it in. I'm going to direct you to redact
14 it, except for the request for documents.

15 MR. SHARGEL: Very well.

16 One more loose end. I don't know if your Honor has
17 had an opportunity to listen to the recording for the name
18 Leslyn?

19 THE COURT: I have. The first one is clear. The
20 second one is a horse race. You'll argue if it, if you're
21 going to use it. Are you going to use it?

22 MR. D'ALESSANDRO: It depends what the defendant
23 testifies to.

24 THE COURT: It strikes me there's something for both
25 sides in it. I'm not going to preclude it on audibility

1 grounds. You agree the first one is clear?

2 MR. SHARGEL: I think the first one is clear. If
3 I'm not mistaken, it was in an alternate transcript that we
4 prepared.

5 THE COURT: It's clear?

6 MR. SHARGEL: Clear.

7 I'm not -- I'm going to elect not to submit an
8 alternate transcript to the jury. I'll make my argument in
9 summation.

10 THE COURT: Fair enough.

11 MR. SHARGEL: Thank you, your Honor.

12 I'm ready to go.

13 THE COURT: Bring in the jury, please.

14 Has the government submitted a proposed charge on
15 the eavesdropping-equipment count?

16 MR. D'ALESSANDRO: We have not. If we can do that
17 by the end of the business day? We anticipate that we may be
18 done before 5:00 o'clock. I don't know if I'm wrong on that.

19 MR. SHARGEL: This may go more quickly than I
20 anticipated yesterday.

21 THE COURT: I assumed once I said we're summing up
22 Monday, everything will quicken up.

23 (Jury present.)

24 THE COURT: Good morning, everybody.

25 THE JURY: Good morning.

Simels - direct - Shargel

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1 THE COURT: Please be seated.

2 Let me tell you where we are in terms of the
3 schedule we've been talking about out here.

4 You're going to get a long week. You're going to be
5 done today. We're going to be done with the evidence today,
6 and rather than -- what I want to avoid, since we're not going
7 to sit on Friday, what I want to avoid is a situation where
8 you hear summations and then break for three days, and I need
9 some time to talk to the lawyers about the content of the jury
10 instructions. So, we'll finish up at some point today.

11 I think all the evidence will be concluded today,
12 and then rather than start summations and then have that
13 three-day break, you'll come back Monday morning, you'll hear
14 summations on Monday, I'll probably charge you on Monday, as
15 well, and you'll commence your deliberations either late
16 Monday or Tuesday.

17 So, that's our deal.

18 Go ahead, Mr. Shargel.

19 MR. SHARGEL: Thank you, your Honor.

20 R O B E R T S I M E L S,

21

22 called as a witness, having been previously duly
23 sworn, was examined and testified as follows:

24 DIRECT EXAMINATION (Continued)

25 BY MR. SHARGEL:

Simel s - direct - Shargel

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1 Q Mr. Simel s, good morni ng.

2 A Good morni ng.

3 Q When we ended the day yesterday, you had testi fied to
4 facts about the equipment that was used to intercept the
5 conversations in Guyana -- correct?

6 A That's correct.

7 Q -- and the equipment that came to the United States,
8 first the laptops and then that other device we've been
9 calling the base; correct?

10 A Right. Laptops in October 2007 and the base at the end
11 of June 2008.

12 Q Were there conversations that you learned had been
13 wiretapped and overheard in Guyana during the period 2002 to
14 2004 that were unrelated to cell phones or interceptions of
15 cell phones?

16 A Yes, there were. Yes.

17 Q And what were those? Could you tell us?

18 A It was my understanding that my clients had arranged for
19 a hardwiring; that is, actually wiring the telephone lines of
20 the Police Chief of Guyana.

21 Q Did the wiretap of the telephone lines of the Police
22 Chief of Guyana produce conversations that were relevant to
23 your defense?

24 A Yes.

25 Q And were they turned over to the government?

Simels - direct - Shargel

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1 A In March of 2008, they were part of the initial four CD's
2 I gave the government.

3 Q We have a letter dated March 18 that's already in
4 evidence as Defense Exhibit 308-B. 308-B is a letter
5 transmitting the four CD's.

6 We saw this yesterday; correct.

7 A Yes.

8 Q Let me show you what has been marked as Defense Exhibit
9 308-A for identification?

10 First, before I even show you this exhibit, when did
11 you receive the so-called Felix conversations.

12 A I received them from my cocounsel Diarmuid White prior to
13 my sending out the letter to the government on March 18.

14 Q Let me show you what was marked as 308-A for
15 identification, and ask you if you recognize that?

16 A I do. That's the letter that Mr. White sent to me with
17 regard to the Felix conversations.

18 Q The Felix conversations were obtained separate and apart
19 from the other conversations?

20 A Yes. We never had them.

21 Q On August 15, did you appear in court on the Khan matter?

22 A Yes, we did.

23 Q Did the subject of the Felix conversations come up?

24 A It did.

25 Q Could you tell us, as best you recall, what occurred?

Simels - direct - Shargel

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1 A One of the areas that the prosecution had continued to
2 ask for was the opportunity to inspect certain equipment, why
3 we got the laptops and the base. I tried to explain to the
4 judge that, as in the Felix conversations, we didn't have that
5 equipment in the United States. It was still in Guyana.

6 Q Have you ever seen that equipment?

7 A Never.

8 Q Did you see that equipment on any of your trips to
9 Guyana?

10 A Never.

11 Q Do you have any idea in whose possession they were?
12 Let's talk about the relevant time period, 2008. Any
13 knowledge as to where that equipment was?

14 A I have no idea.

15 Q Yesterday, at the end of the day, we talked about
16 different ways of gathering information to help defend the
17 case. You told us about trips to Guyana, three trips that
18 we've discussed so far, and the investigation. How did you
19 plan on using this information?

20 A All of the information we were gathering was for the
21 purpose of developing additional leads, contacting other
22 people, verifying information we had received, and pursuing
23 our investigation, giving the notes to my investigators, my
24 cocounsel, and see what ideas everybody had about how to
25 proceed.

Simels - direct - Shargel

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1 Q When Mr. Vaughn came and met you for the first time on
2 May 13, 2008, did you discuss any of the information that you
3 had gathered previously?

4 A Yes.

5 Q Did you ask him about Agricola?

6 A I did.

7 Q Did you ask him about the Buxton kidnapping?

8 A The United States Ambassador Lesniak. I asked him about
9 that as well David Clark.

10 A Yes.

11 Q The Shortman topic that you were pursuing at the time?

12 A Yes.

13 Q Did you ask him specifically whether he knew who killed
14 Donald Allison?

15 A I did direct that question to him.

16 Q Tell the jury why were you directing these questions to
17 him.

18 A Well, at all times, as I said, not only was I attempting
19 to verify what my client was telling me or not, but I was
20 trying to develop leads. I was trying to probe information.
21 I was trying to probe what this man was telling me, Vaughn, on
22 that day. I wanted to know whether he had firsthand
23 information; that is, information that can be used in a
24 courtroom, or just hearsay or third-party information.

25 So, that's part of what you do. You ask questions.

Simels - direct - Shargel

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1 You see what they know. You check their demeanor. You see
2 whether you think they would look good on the witness stand,
3 not look good, be articulate, not articulate, and decide
4 whether they had evidence that a judge would permit a jury to
5 hear.

6 Q On May 13, 2008, again, remind us the first meeting with
7 Mr. Vaughn, what other contribution did you think that he can
8 make to the defense of Roger Khan?

9 A He indicated to me he had the ability to find people in
10 the Guyanese community.

11 Q In fact, there was one point on the tape where you
12 actually spelled out his name in a different way. Can you
13 remind of what that was?

14 A Yes. I spelled it out based on what he told me,

15 F I N D M A N

16 Q Now, the next time that you meet Mr. Vaughn after May 13
17 2008 was June 11; correct?

18 A Correct.

19 Q Why did you wait a month or nearly a month to meet with
20 him again?

21 A I wasn't happy with his demeanor. I was not happy with
22 his answers. I thought he had lied to me during the first
23 meeting. I sent a message down to my client saying I didn't
24 think this fellow was credible. I didn't think he was
25 consistent with I had been led to believe he would say. We

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1 had the June 2 decision by Judge Irizarry, granting us a
2 Rule 15 in Guyana. All those factors made him a nonfactor, to
3 me.

4 Q So, during the meeting of June 11, 2008, there is a
5 reference by Mr. Khan -- I'm sorry. Withdrawn. --
6 Mr. Vaughn to some people's mothers.

7 Do you remember that?

8 A I do.

9 MR. SHARGEL: Can we have that on the screen?
10 June 11.

11 Q Mr. Vaughn says: "Um, I think" --

12 MR. SHARGEL: Actually, can we have the attribution
13 or two before this.

14 Q Vaughn is first saying: "We don't have a lot of time to
15 play around with, so, you know, if I'm -- if I am going to go
16 out there, I must know, well, what I am out there to do,
17 because we don't have time to waste, and we don't have such a
18 margin to correct mistakes."

19 There had been discussion up until this point of
20 things you wanted to find out to prepare your defense; right.

21 A Correct.

22 Q So, you say; "Right. I agree. I agree."

23 The fact is that trial was approaching, wasn't it.

24 A October 27.

25 Q And Mr. Vaughn says: "So, whatever we do, we just got one

Simels - direct - Shargel

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1 shot at it."

2 And you say: "Well, I'm persuaded that some people
3 will go back to Clark and say, I've been approached."

4 And Vaughn says: "Um, I think if you know key
5 people, you get certain key people, it would cause him to
6 rethink his position. One thing I've learned is that a man,
7 whether he's a criminal, he's a preacher, he always values his
8 mother, because if you're not certain with anyone else to be
9 at your side, your mother very likely will be there. You
10 don't ever want anything to happen to her."

11 He puts that thought out there; right, Mr. Simels.

12 A Yes.

13 Q Let's look at what you say next?

14 You say: "The one that told us, was it you who told
15 us that Leslyn had a prior case? Somebody told that.

16 "No, no, no, no. I know who told us that."

17 It goes on. I don't have to read the whole thing.
18 It goes on, and you do not respond to this comment; right;
19 correct.

20 A Correct.

21 Q Could you tell the jury why you don't respond to this
22 comment?

23 A I either ignored it as stupidity at the time, which I
24 think is what I did, or I didn't hear him fully say it. I
25 would ignore these kind of remarks made to me.

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1 Q Did you understand what he was driving at at the time?

2 A I didn't give it much thought at the time to what he was
3 saying to me. Not uncommon.

4 Q Did you write an e-mail to him two days later?

5 A I did, because I did think about it.

6 Q What did you think when you were thinking about it?

7 A I decided that in light of some of the thoughts that he
8 had expressed during the meeting, it was important to
9 reinforce to him not to do anything stupid out there and not
10 to say things that might be misconstrued by anybody as being
11 improper or taking any actions that would be improper.

12 MR. SHARGEL: May we see Government's Exhibit 208 on
13 the screen? Please blow it up.

14 Q So, this is you writing to fine.man@hotmail.com?

15 A Correct.

16 Q You know this went right to Investigator Mazzella; right?

17 A Yes.

18 Q But at the time, you thought -- did you think this was
19 being sent to Selwyn Vaughn?

20 A I did.

21 Q And simply says "Be careful," meaning Roger?

22 A Yes.

23 Q Simply says: "Be careful in your efforts to gather
24 information and not do anything that can be misconstrued by
25 anyone. These are difficult times, and people will draw the

Simel s - direct - Shargel

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1 most unfavorable i nferences. So, be cautious. Have
2 authori zation for payment for gathering materi al s. "

3 Do you see that.

4 A I do.

5 Q By the way, authori zation for payment was authori zation
6 from Roger Khan; ri ght?

7 A Correct.

8 Q And that was to do what?

9 A Give him a thousand dollars to be able to go out, go to
10 the bars to look for the people we were looking for, to travel
11 around the park, to come see me, things of that nature.

12 Q Was that thousand dollars given by you to influence hi s
13 testimony as a witness?

14 A Not at all.

15 Q There were other times during these conversations where
16 you cautioned Selwyn Vaughn; i s that correct?

17 A Correct.

18 MR. SHARGEL: Can we have July 30, page fi ve?
19 Transcript of July 30, page fi ve.

20 Q The top of the page, i f we can blow up that part?

21 "So, what' s cooki ng?"

22 You say: "Your fri end says he appreci ates everything
23 you' re doi ng. "

24 That refers to Roger Khan; ri ght.

25 A Yes.

Simels - direct - Shargel

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1 Q And he says: "Aha."

2 And you said that: "He can't remind you enough to
3 be careful, be careful, be careful."

4 He says: "All right."

5 "This, uh, they have a shitty case against him, and
6 let's not make it better by doing something silly."

7 Vaughn says: "Sure, I agree."

8 What was the purpose of saying this to him.

9 A I was trying to reinforce to him, Don't do anything that
10 makes the government's weak case against Roger better by doing
11 something, harassing somebody, suggesting anything other than
12 that he was out there to arrange meetings for me with the
13 witnesses.

14 Q Did there come a time when -- going back to June of
15 2008 -- did there come a time when you went to Guyana again

16 A I did.

17 Q And this now is the fourth trip that you made to Guyana?

18 A It is.

19 Q Tell us what you learned on the trip to Guyana in June of
20 2008.

21 A I learned a number of things during that trip. One of
22 them related to an additional witness, who we thought was
23 probably the most important witness on Clark we had
24 discovered.

25 Q Who was that?

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1 A His name was Rawle Gulliver.

2 Q And how did Mr. Gulliver fit into the case?

3 A Major Peters had found for me a person that the military
4 had use for in the 2000 to 2006 period as an informant inside
5 the Village of Buxton, who had been planted there as an
6 undercover agent to observe the criminals in Buxton, and he
7 was giving me a firsthand account of what he observed with
8 regard to David Clark, Colonel Ben, Colonel Collins, Collins
9 and others and their interaction with the criminals, their
10 supplying the criminals with rounds of ammunition, including
11 David Clark, their participation in murders, and their removal
12 of bodies of sugar-cane workers who had been removed by David
13 Clark in his car, and other things.

14 THE COURT: If you conclude these statements were
15 made to Mr. Simels, you can't consider them for the truth.
16 Understood?

17 Go ahead, Mr. Shargel. I'm sorry for the
18 interruption.

19 MR. SHARGEL: That's perfectly fine.

20 Q Mr. Simels, what use were you going to make of
21 Mr. Gulliver, Rawle Gulliver?

22 A At this point, it became essential to me that I try to,
23 one, confirm all the details of his account, and, secondly,
24 then try to add him onto the Rule 15 witness list.

25 Q What else did you learn -- what else, if anything, did

Simels - direct - Shargel

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1 you learn in Guyana during that trip, June 2008?

2 How long were you there, by the way.

3 A I think four days.

4 Q And during those four days in Guyana, who did you go with
5 on this occasion?

6 A I went with Mr. Avakian.

7 Q What did you learn in addition to the potential use of
8 Mr. Gulliver as a witness?

9 A Well, I heard various rumors while I was there, one
10 regarding a fellow named Ryan. I explored the rumor. I heard
11 from his father that his son was a madman. I heard that he
12 was smoked coke all the time, so he was -- I'm interested, but
13 I'm not really concerned about this person's history.

14 I learned about the fact -- I met with Kevin, Barry
15 Dataram while he was there, and asked him about the
16 transaction involving Vijay Jagarain's son, and he gave me
17 the details of the transaction. He told me that it was not
18 Roger, but that it was a fellow named Imran Khan, who had
19 actually participated in the transaction.

20 Q Who is Imran Khan?

21 A A drug dealer.

22 Q Related to Roger Khan?

23 A Not really. Just similar last names. Khan down there is
24 similar to Smith and Jones, perhaps.

25 I met Imran Khan. I asked him about the

Simels - direct - Shargel

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1 transaction. He denied the transaction to me, but admitted
2 knowing and participating at one time in his life with Dave
3 Persaud, although he denied the specifics of the Son
4 transaction.

5 I believe that I was in a position, once I obtained
6 a picture of Imran Khan, to develop that evidence with regard
7 to Son.

8 Q Now, when you returned from Guyana in June of 2008 -- by
9 the way, do you recall when it was you returned, the date?

10 A I believe I got back either the evening of the 18th or
11 the morning of the 1st.

12 Q Then you met with Mr. Vaughn on the 20th; correct?

13 A I did.

14 Q When you got back from Guyana, did you have notes?

15 A I did.

16 Q And did you take notes in the fashion similar to what
17 occurred on earlier three trips in connection with your
18 investigation, your personal investigation?

19 A I did. I made them either shortly at the -- right at the
20 time I was meeting with the people or shortly thereafter.

21 Q Let me show you what's been marked as Defense Exhibit
22 305-D for identification, and ask if you recognize that, 305-D
23 as in David.

24 A Yes.

25 Q What do you recognize it to be?

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1 A This was my e-mail, with attached copies of my memos from
2 Guyana in both Word Perfect and Word versions.

3 Q Why did you have it in two different versions?

4 A I was sending it to myself, to my laptop, so I could have
5 it on my hard drive, download it and put it on my hard drive
6 from the Word. The Word copies were for Diarmuid White. The
7 Word Perfect was for our files, as we use Word Perfect.

8 Q Attached to this document, you have the memorandum that
9 you prepared from your notes in Guyana; correct?

10 A Correct.

11 MR. SHARGEL: I offer 305-D in evidence.

12 THE COURT: Any objection?

13 MR. D'ALESSANDRO: No, your Honor.

14 THE COURT: Received.

15 (So marked.)

16 THE COURT: Did you say B or D?

17 MR. SHARGEL: D as in David.

18 Q Turning to -- the pages aren't numbered.

19 Turning to the fourth page of the exhibit. This is
20 information, as you told us, you learned, information about
21 Ryan Pemberton; correct.

22 A Right.

23 Q This was impeachment material that you were gathering?

24 A Yes. "Glenn" referred to Glenn Hanoman, who tried to get
25 the criminal history on this person, and the other information

Simels - direct - Shargel

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1 is about him smoking blackjack, coke in a cigarette.

2 Q This is all information you gathered down there?

3 A It is.

4 Q Turning now, four pages later: "Clark is an Islamic
5 fundamentalist and hates America." This is part of the number
6 of the topics that came up with Leslyn Camacho later on;
7 correct?

8 A I met with a captain in the military who provided me with
9 this information.

10 Q And this is just a record of the information that you
11 learned; correct?

12 A He told me he thought there were tapes of the seminars in
13 which Clark had preached his anti-American philosophy to those
14 who were in guerilla training. I wanted to obtain copies of
15 those to use against Clark at trial, or at least to show it to
16 the government before trial.

17 Q Did you rely on this document at all in preparing the
18 proposed affidavit, the draft affidavit for Leslyn Camacho?

19 A This was certainly one of the main sources, among other
20 information, I had to prepare that affidavit.

21 Q Two more pages that I would like to focus on. One is
22 three pages later. You testified learning information about a
23 potential witness named Rawle Gulliver, and seeing him down;
24 there, is that correct?

25 A That's correct.

Simels - direct - Shargel

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1 Q You took information about him. Date of birth. Why do
2 you want to know the date of birth, by the way?

3 A Well, that's information, among other things, we have to
4 turn over to the prosecution before our witnesses are called
5 on the witness stand, so they can check the background of the
6 witness. I also wanted to be able to independently confirm
7 information, if I can, about them.

8 Q So, we're not going to go into detail. It's in evidence.
9 This contains information that was provided to you by Rawle
10 Gulliver; correct?

11 A This was the information -- these are my notes of my
12 meeting with him, yes.

13 Q It goes on for some pages?

14 A That's correct.

15 Q Now, you told us about Imran Khan.

16 Clark would provide weapons, ammo to Buxton;
17 correct? Did you learn that before.

18 A I learned that before, and Rawle Gulliver was confirming
19 it.

20 Q Then finally: "Clark had a drug venture going with
21 Semple, Sergeant Williams, and Imran Khan. Williams caught in
22 New York."

23 You mentioned Imran Khan here.

24 A That's correct.

25 Q These were notes that were taken by you in June of 2008;

Simels - direct - Shargel

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1 correct?

2 A Correct.

3 Q When you got back to New York and met with Mr. Khan on
4 June 20, did you discuss with him the information that you
5 learned from Mr. Gulliver?

6 A I started to.

7 Q Tell me what happened or tell the jury what happened.

8 A As I started to discuss it and give him the account
9 Mr. Gulliver had given me, Mr. Vaughn said that the person was
10 making up the fact that he had observed Rondel Rawlins being
11 treated by Clark's wife, given medical care, because that he,
12 Vaughn, had been the one who had arranged for the house where
13 the care was given.

14 This told me two things immediately about Vaughn.
15 One, that he was lying to me up to that point, because he told
16 me he only met Roger Khan in 2005 and was not involved in
17 these events before then, and I knew that the events with
18 Rawlins getting hurt was in 2003.

19 And, secondly, I thought that he was dismissing this
20 person's account because he didn't want that person to become
21 the star in our horizon with regard to Roger. He wanted to
22 continue to be the star.

23 Q Did you take other steps to check out the information
24 that Mr. Gulliver had given you?

25 A Yes.

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1 Q And what steps did you take?

2 A I attempted to confirm with various people in Guyana
3 whether any of this was true. He had told us about a map that
4 he had prepared. We attempted to get a copy of the map that
5 he had prepared from the military. We attempted to get
6 photographs of the events that he described to us. Much of it
7 was being reported to me was being confirmed. I did not have
8 the reports in my possession before I was arrested.

9 Q Let me show you what's been marked as Defense Exhibit
10 S-310-B for identification.

11 MR. SHARGEL: I'm sorry. For identification, your
12 Honor.

13 Q Showing you what's been marked as defendant's 310-B for
14 identification. I ask you to look at it, and tell me whether
15 you recognize it.

16 A I do.

17 Q What do you recognize it to be?

18 A It's my e-mail to Paul Rodriguez and Gerald Pereria,
19 asking them about Mr. Gulliver's account.

20 MR. SHARGEL: I offer in evidence 310-B.

21 THE COURT: Any objection?

22 MR. D'ALESSANDRO: No, your Honor.

23 THE COURT: Received.

24 (So marked.)

25 Q This e-mail, as you said, is to Paul Rodriguez and Gerald

Simels - direct - Shargel

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1 Pereria. You met them on your first trip to Guyana; right?

2 A Correct.

3 Q And you say: "Here are my notes. Perhaps you can look
4 and correct or add as may be appropriate"; correct?

5 A That's correct.

6 Q So, essentially, this looks familiar. You just
7 cut-and-pasted this with the e-mail, your notes from the memos
8 that we just saw in evidence?

9 A That's exactly what I did.

10 Q You wanted to find out if this information was accurate;
11 right?

12 MR. D'ALESSANDRO: Objection to form.

13 THE COURT: Sustained.

14 Q What was your intention in writing this?

15 THE COURT: Don't lead.

16 MR. SHARGEL: Sorry.

17 THE COURT: Don't lead.

18 MR. SHARGEL: All right.

19 A I was attempting to confirm whether it was accurate.

20 Q On June 20, do you remember the attribution -- I'm sure
21 you can't correct the attribution -- the don't-kill-the-mother
22 attribution?

23 A Yes, I remember.

24 Q During that conversation -- you explain in your own
25 words. I don't want to lead. You explain what did you have

Simels - direct - Shargel

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1 in mind when you said that.

2 A I discussed this person when I was in Guyana, Vaughn, and
3 I was told in short that he was making himself bigger than he
4 is and that he was really a wuss. That was their description
5 to me. I sort of made it emphatic to him when I came back not
6 to do anything stupid, that that would settle the matter with
7 him.

8 So, when I met with him, I said to him, All he says
9 is, Don't kill the mother. Vaughn had no respect for me. I
10 mean, I was a nobody except a lawyer. Certainly didn't trust
11 me at the first meeting, and wanted Roger's authorization to
12 talk to me. So, in my world, I viewed him as being somebody
13 who would only respect Roger.

14 Q What did you tell him with respect to Roger?

15 A I wanted him to understand that if he did anything
16 violent, anything, the person who is going to get hurt is
17 Roger, not me, and that if he wanted to make sure that Roger
18 didn't get hurt -- and that would include if somebody got
19 hurt, Roger would be taken out of the what they call general
20 population, where I could meet with him regularly and he had
21 access to his typewriter and the law library and every other
22 aspect of the jail, he would be thrown in what they call the
23 Special Housing Unit, locked down twenty-four hours a day in a
24 cell, no access to the library or books, no access to me,
25 basically -- and I was trying to emphasize to this guy, You

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1 don't want that to happen. If you like Roger, you don't want
2 that to happen, because that will screw up Roger completely
3 and our preparation of the defense.

4 Q By the way, are you familiar with the concept in our
5 criminal law called forfeiture by wrongdoing?

6 A I certainly am.

7 Q Were you familiar with the concept of forfeiture by
8 wrongdoing in the summer of 2008?

9 A Yes, absolutely.

10 Q Could you explain to the jury what forfeiture by
11 wrongdoing meant to you at the time?

12 MR. D'ALESSANDRO: Objection, your Honor.

13 THE COURT: Come up.

14 (Sidebar.)

15 THE COURT: Yes.

16 MR. D'ALESSANDRO: Obviously, I thought it was
17 better to object before the answer was given. I don't know
18 what the answer is going to be to this. If it's something
19 akin to an instruction of what the law is, that's your Honor's
20 job, to instruct the jury on what the law is on any defenses
21 to the crimes charged. If it's articulating his
22 misunderstanding of the law and he did something because he
23 was ignorant, ignorance of the law is no defense. I don't see
24 any relevance to this question.

25 MR. SHARGEL: I think the objection is far afield.

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1 I wanted to simply point out that he knew at the time that if
2 something -- some harm came to Clark and they connected it to
3 the defendant, that Clark's statements, unsworn and sworn,
4 would be admitted into evidence, he would have no opportunity
5 to cross-examine him, and he was not gaining an advantage by
6 having witnesses dispatched.

7 THE COURT: He's not going to say that Roger Khan
8 would forfeit his right to cross-examine Clark if Clark's
9 sister was killed; right?

10 MR. SHARGEL: No. They didn't make that argument.
11 That's really weight, not admissibility.

12 THE COURT: Overruled.

13 (In open court.)

14 MR. SHARGEL: MR. SHARGEL: May I put the question
15 again, your Honor?

16 THE COURT: Yes.

17 Q What did you understand -- and I'm asking for your
18 understanding in 2008 -- what was your understanding as to the
19 law in connection with forfeiture by wrongdoing?

20 A If something happens to a witness, Alicia Jagnarain,
21 anybody in this case, and they are not able to testify at the
22 trial, the prosecution is allowed to introduce not only their
23 prior testimony, but all of the notes that the prosecutors
24 took from this person, and, worse, we don't get to
25 cross-examine the person, because we don't get to

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1 cross-examine notes and we don't get to cross-examine
2 testimony.

3 So, I didn't want anything to happen to the
4 witnesses, because we were ready to attack on the witness
5 stand Alicia and the other witnesses with credible evidence.

6 Q Right after --

7 THE COURT: Excuse me. I have permitted the witness
8 to testify to his understanding, and that was the question
9 Mr. Shargel posed, because it's relevant to his state of mind.
10 What the law actually is, you'll take from me, not from this
11 witness or any other. All right?

12 Go ahead, Mr. Shargel.

13 MR. SHARGEL: Thank you, your Honor.

14 By the way, I was reminded that Defense Exhibit
15 308-A that I laid a foundation but I didn't move into
16 evidence. I would like to move that into evidence now.

17 THE COURT: Any objection?

18 MR. D'ALESSANDRO: No, your Honor.

19 THE COURT: Received.

20 (So marked.)

21 Q Now, there was reference or mention during the
22 conversation of June 20, 2008 to George Allison; do you recall
23 that?

24 A I do.

25 Q Let me put the question to you: Did you have any

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1 intention to have Vaughn or anyone else harm George Allison in
2 any way?

3 A No. We wanted to see George Allison. We wanted to talk
4 to him. We thought he knew a lot about Clark.

5 Q Was George Allison a potential witness for you?

6 A No. I would assume he would be arrested by the
7 government the minute he showed up. He had been on the Lilly
8 wiretap sending drugs to the United States. Ultimately, I was
9 correct. He was arrested in 2009.

10 MR. D'ALESSANDRO: Objection.

11 THE COURT: Overruled.

12 Q Now, I would like to turn your attention to certain
13 people that you've discussed already in your testimony at some
14 length, but certain people who have been the subject of an
15 accusation that you tampered with and ask you questions about
16 those people.

17 A Sure.

18 Q First of all, did you authorize, encourage or suggest to
19 Selwyn Vaughn that he bribe anyone?

20 A Never.

21 Q Alicia Jagnarain. Can you just briefly, very briefly, in
22 a sentence or two, and I'll ask you this with respect to each
23 such person, remind us all who she is and what her
24 significance was in the case? Just a couple of sentences.

25 A Alicia Jagnarain was a drug dealer who had together with

Simels - direct - Shargel

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1 her boyfriend, Dave Persaud, run drugs from Guyana to Queens
2 and distributed through New York. She was arrested in 2003,
3 started to cooperate, and got a reduced sentence from the
4 government for her cooperation, and had told them she had a
5 ledger which had the name "Shortman" in it, a drug ledger.

6 Q That might have been six sentences?

7 When did she first come to your attention.

8 A She first came to my attention in my meetings in
9 January '07 in Guyana.

10 Q What was the defense strategy with regard to her?

11 A We had developed evidence that she had engaged in drug
12 trafficking, continued to sell drugs while cooperating with
13 the government.

14 We had evidence through our handwriting expert that
15 she may have fabricated the ledger and created it after she
16 began cooperating.

17 We had evidence that she had lied to the government
18 in her debriefings.

19 We had a lot of evidence on Alicia.

20 THE COURT: Excuse me, Mr. Simels.

21 Again, this is very important, because to the extent
22 the witness believes this evidence exists, it's very important
23 to his state of mind. But I feel the need to continually
24 continue to remind you of the fact that this information
25 imparted to Mr. Simels, pursuant to his efforts in defending

Simels - direct - Shargel

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1 Roger Khan, is hearsay. Don't consider it for the truth, but
2 his belief. That if you conclude that these things were
3 imparted to him and that he believed them, it's relevant to
4 his state of mind in dealing with Selwyn Vaughn.

5 It's an important distinction. All right. I wanted
6 to remind you of it.

7 I'm sorry, Mr. Simels. Go ahead.

8 THE WITNESS: No, your Honor.

9 Q Did your investigation produce information that was
10 helpful to the defense?

11 A Very helpful to the defense. We were able to corroborate
12 almost everything that we had looked into and led to believe.

13 Q Did you ever try to keep your defense interest in Alicia
14 Jagnarain a secret?

15 A Never.

16 Q She was mentioned in court files? Yes or no.

17 A She was mentioned in court files.

18 Q Before you met Selwyn Vaughn, did you make any effort to
19 interview, either through an investigator or yourself, to
20 interview Alicia Jagnarain?

21 A All three of our New York investigators, yes.

22 Q Was your investigation of Alicia Jagnarain completely
23 successful?

24 A No.

25 Q Why not?

Simels - direct - Shargel

1404

1 A There was still more we can do, and certainly one of the
2 things I wanted to do was to speak directly to Alicia
3 Jagnarain.

4 Q Were you able to accomplish that?

5 A No.

6 Q You never met her?

7 A Never.

8 Q What did you think that Selwyn Vaughn could do for you in
9 connection with Alicia Jagnarain?

10 A I think he was Guyanese and can go into a Guyana
11 community, Tic Tock Tavern, any other areas in Queens that are
12 primarily Guyanese, and be successful in locating her and
13 telling us where we could find her. Otherwise, we had been
14 unsuccessful through our investigators and our other efforts,
15 including my secretary.

16 Q Your secretary was Guyanese?

17 A My secretary was Guyanese.

18 Q Did she make any effort to find people?

19 A She went out looking for Farrar, and she went out looking
20 for Alicia.

21 Q Let's turn our attention to Farrar. Do you have a last
22 name for her?

23 A Farrar?

24 Q Farrar.

25 A Singh, S I N G H.

Simels - direct - Shargel

1405

1 Q Remind us who she is or who she was in 2008?

2 A We had been told, beginning in January of '07, my notes
3 of the Guyana trip, that Farrar Singh had an intimate
4 relationship with David Persaud and with Alicia Jagnarain, and
5 they continued that relationship over the course of years.

6 Q Were you or the investigators that you employed
7 successful in finding her?

8 A None of the three were.

9 Q By the way, is she a witness in the case?

10 A No.

11 Q For either side?

12 A For nobody.

13 Q What was she supposed to do?

14 A I just wanted to know if she knew anything about Alicia
15 that we could use, and whether she had stayed in contact with
16 Alicia and whether she could make contact with Alicia on our
17 behalf. We cannot use in court the fact that they had an
18 intimate relationship. It would not have been a permissible
19 question to ask Alicia. She was our -- only background
20 information to us and our ability to contact Alicia.

21 Q Up to this date, have you ever met Farrar Singh in your
22 life?

23 A No.

24 Q Have you ever seen her in person?

25 A No.

Simels - direct - Shargel

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1 Q You have a picture. Have you ever seen her in person?

2 A I have not seen anything beyond the picture. It's a
3 picture that came from us.

4 Q What did you think that Selwyn Vaughn could do? How
5 could he help with regard to Farrar Singh?

6 A First, we were told that Farrar Singh was a bartender in
7 the Tic Tock Tavern. Then we were told she was a dancer.
8 Then we were told -- Peter Headley told me she worked in a
9 strip club off Liberty Avenue, when I went out to interview
10 him. So, we were looking in those locations to see if we
11 could find her.

12 Q Peter Headley is the person that you interviewed at a
13 prison in Ohio?

14 A That's correct.

15 Q Was there a discussion about paying money to Farrar
16 Singh?

17 A There was.

18 Q What was that about?

19 A Mr. Vaughn had said he had located her in a Brazilian
20 strip club, and that things going on there were the normal
21 things that would happen in a Brazilian strip club. I
22 therefore was led to believe she was a lap dancer, and perhaps
23 she would be willing, if we could give her information -- pay
24 her, give us information.

25 Q Now, what was your understanding, in the summer of 2008

Simels - direct - Shargel

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1 and indeed throughout your entire career in the law, as to
2 whether you can pay someone, not a witness, but pay someone
3 for information?

4 A That you can do that.

5 Q Let me turn our attention to Vijay Jagnarain. I'll refer
6 to him, as everyone has, as "Son." That's his nickname;
7 right?

8 A Correct.

9 Q Up until today, have you ever met Vijay Jagnarain, have
10 you ever met Son?

11 A No.

12 Q Have you ever seen him in person?

13 A No.

14 Q Tell us or remind us who he is.

15 A Vijay Jagnarain was a drug dealer who was working for a
16 law firm in New York while he was selling drugs that he was
17 getting from Guyana.

18 Q Did you say a law firm?

19 A A law firm. He worked at Skadden Arps.

20 Q What was his expected testimony, very briefly?

21 A If he testified at the trial?

22 Q If he testified at the trial.

23 A I anticipated he would say that he had gone into one drug
24 transaction in Guyana, and had met Roger Khan for a few
25 moments.

Simels - direct - Shargel

1408

1 Q Was there an investigation of Son?

2 A We did investigate him.

3 Q What did the investigation -- what -- tell us briefly,
4 what did the investigation accomplish?

5 A Once we heard the name, which came from a government
6 transcript that was given to us, we searched the court
7 records. We looked at the court records.

8 We found a copy of the document that charged him
9 with the crime of drug trafficking. We got a copy of the plea
10 minutes with regard to when he pled guilty. We obtained
11 information about who had put up his bail. We sent for, by
12 subpoena to Skadden Arps, the law firm he works for, and to
13 Home Depot, where we determined that he was working at that
14 time, information about his employment applications to see
15 whether he had lied on them or what the circumstances were of
16 his termination from Skadden Arps.

17 Q Let me ask you a question: There's been a lot of
18 testimony from both sides about court records. We're talking
19 about public court records, are we?

20 A Public court records that you get on the first floor of
21 this building.

22 Q That's available to anyone in the normal course of court
23 activity?

24 A Anybody.

25 Q Why did you want to see Son? What was the purpose behind

Simels - direct - Shargel

1409

1 your desire to see him?

2 A I at least had been told in Guyana by Barry Dataram and
3 through my contact with Imran Khan that it was not Roger Khan
4 who had seen or had any interaction with Son, but it was Imran
5 Khan. And Imram Khan is like Roger Khan's double, so we
6 wanted to be able to confront Son with that fact that we
7 thought he was lying, or perhaps, as often happens in
8 cooperation agreements, you tell the government what you think
9 they might want to hear.

10 Q Were you successful in finding him?

11 A We were successful, yes.

12 Q And in what sense were you successful?

13 A We had an address. I sent Deborah Martin, the
14 investigator who was here, to go interview him and ask him
15 what he knew about Roger Khan and drug transactions.

16 Q You heard testimony that he refused to speak to her;
17 right?

18 A Correct.

19 Q Did you ever get to speak to him? I think I put this
20 question. Forgive me if I have. Did you ever get to speak to
21 him?

22 A Never got to talk to him.

23 Q Did there come a time when you heard that he had a
24 brother in Guyana who was a judge?

25 A Yes.

Simels - direct - Shargel

1410

1 Q And did you have any interest in contacting the judge?

2 A I did. I thought that if we were in a position to
3 contact his brother, who we knew or believed to be a judge in
4 Guyana, that he could explain to his brother that he could
5 meet with us, that he could not -- we wanted him to tell him,
6 Don't lie, that no cooperation agreement is worth getting up
7 there and lying and then being exposed. So, I wanted to get
8 his brother a transcript of what he had said, so the brother
9 could read it as a judge and give his brother advice, maybe
10 have him back off of not meeting with us, and back off of his
11 account, that he was lying.

12 (Continued on next page.)

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Simel s-di rect-Shargel

1411

1 CONTINUED DIRECT EXAMINATION

2 BY MR. SHARGEL:

3 Q How did you think Selwyn Vaughn would help in this matter
4 with Son?

5 A I thought as we were trying -- a couple of things. If
6 he could speak to anybody down in Guyana, might get people
7 down there moving a little quicker to make that kind of
8 contact with the brother, the judge and secondly, if he would
9 possibly go see him, explain to him we want to talk.

10 Q Do you know of any prohibition -- your understanding of
11 the law -- do you know of any prohibition that would keep you
12 from sending someone to speak to Son?

13 A There's no prohibition. In fact, there's a requirement I
14 try to do that.

15 Q We heard the name, first name Ryan. We know now that to
16 be Ryan Pemberton?

17 A Yes.

18 Q Remind of us who he is, what his role was in the Khan
19 case from your perspective back in 2008.

20 A I heard of Ryan during my June, 2008 meeting in Guyana.
21 I was told that his wife had left him and said that he was
22 cooperating with the DEA against Roger and that he was a crack
23 head and his father thought he was a madman; he was hiding
24 upstairs in his father's attic.

25 Q When were you told this?

Simel s-direct-Shargel

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1 A In June of 2008 when I was in Guyana.

2 Q Did you ever meet Ryan Pemberton?

3 A No.

4 Q Ever see him in your life?

5 A No.

6 Q When did you first hear his name?

7 A June, 2008 when I was in Guyana.

8 Q What steps did you take to pursue that rumor, what you
9 had heard about Ryan Pemberton?

10 A I e-mailed Glen Hanoman, an attorney in Guyana, ask him
11 if he knew anything about the person's background and asked
12 people in Guyana to follow up, see what was the story.

13 Q Did you drive by his house in Guyana?

14 A I did.

15 Q Tell us what happened.

16 A I was out with Paul Rodriguez in a car, Chuck Avakian in
17 the car, going to a couple of meetings, spring by Ryan's
18 father's house to talk to us. We drove by the house. We
19 stopped across the street, Paul hit the horn twice, didn't
20 come down. We left.

21 Q Did you ever prepare an affidavit for Ryan Pemberton?

22 A I did.

23 Q Is that the affidavit that we saw in evidence, the
24 government put in evidence?

25 A That's correct.

Simel s-direct-Shargel

1413

1 Q That affi davi t was unsigned; is that correct?

2 A Unsigned.

3 Q Did that affi davi t ever leave your office for Guyana?

4 A No.

5 Q David Clarke, I don't know we need to be reminded about
6 him, but the only time you saw him was in the Queens facility
7 for about how long?

8 A Ten seconds, 15 seconds.

9 Q You had been investigating him during what period of
10 time?

11 A I began investigating David Clarke from January of 07,
12 2007; that is, until I was arrested.

13 Q By the way, with respect --

14 MR. SHARGEL: Might I have a moment, your Honor?

15 THE COURT: Yes.

16 (Pause.)

17 Q May I show you an Exhi bi t 531 for i denti fi ca ti on?

18 Q Do you recognize Exhi bi t 351?

19 A I do.

20 Q What do you recognize it to be?

21 A It's a copy of a letter that I sent to the president of
22 Guyana, Bharrat Jagdeo, August 28th, 2008.

23 MR. SHARGEL: Subject to agreed-upon redaction, I
24 offer thi s i n evi dence.

25 THE COURT: Yes, redacted, to be clear, I wasn't

Si mel s-di rect-Shargel

1414

1 explicit, redact the footnotes.

2 MR. SHARGEL: I'm not going to publish it now.

3 THE COURT: I assume someone is going to prepare a
4 redacted copy?

5 MR. SHARGEL: Yes. It will be agreed upon. We'll
6 show it to the court.

7 THE COURT: Thank you.

8 MR. SHARGEL: With that understanding --

9 THE COURT: Received, 531.

10 (So marked.)

11 Q This is a letter, not being published at the moment, this
12 is a letter that is directed to the President of Guyana,
13 right?

14 A Correct.

15 Q The president of the country?

16 A Correct.

17 Q You wrote to the president of the country, correct?

18 A I did.

19 Q You asked him for certain materials?

20 A That's correct.

21 Q Would you just tell the jury your recollection or give
22 the jury a description of the materials that you were seeking
23 from the President of Guyana but just limit it to that, just
24 identify what the materials sought were.

25 A We asked the President of Guyana, based upon a

Simel s-direct-Shargel

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1 conversation I had in my June meeting in Guyana, to provide us
2 with documents from both the military, from the police
3 department, records relating to David Clarke, Alicia
4 Jagnarain, David Persaud, all the other witnesses who we
5 anticipated the government might call at the Roger Khan trial.

6 Q David Persaud was already dead at that point, wasn't he?

7 A It was relevant to us that -- and the Allison killings --
8 because the government had filed a motion in the Roger Khan
9 case, request for the judge in the Roger Khan case they be
10 able to introduce evidence of David Persaud's death and of
11 Donald Allison's death. We wanted copies of all the police
12 reports, all the investigation relating to the death of
13 Allison, all the police reports relating to the death of David
14 Persaud. We were asking the president of the country to
15 provide that to us.

16 Q What was the purpose of speaking to Selwyn Vaughn about
17 David Clarke during the meetings that you had with him?

18 A First, he told us in the very first meeting that he grew
19 up in the same village; that he went to school with Clarke's
20 brother, Hubert; that he, like George Allison, were all
21 neighbors, lived next to each other, childhood friends. We
22 were interested in his perspectives what he knew about David
23 Clarke and his brother Hubert.

24 Q By the end of June, 2008, into early July of 2008, in
25 your view did Selwyn Vaughn accomplish anything for you that

Simel s-direct-Shargel

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1 would help the investigation?

2 A As of what date, I'm sorry?

3 Q Right up through June and into early July. You met him
4 May 13th and now I'm taking you -- actually from that date,
5 day one, May 13th right up to the end of June. I want to stay
6 with that, perhaps the beginning of July, the first eight days
7 in July. What did Selwyn Vaughn accomplish for you?

8 A Accomplished nothing except wasting my time.

9 Q Why did you keep seeing him?

10 A One, my client wanted me to keep seeing him. My client
11 was facing a case where he could go to jail for the rest of
12 his life with no parole. You listen to your client.

13 Number two, I dealt with reluctant witnesses in the
14 past, people who aren't forthcoming. You keep working with
15 them, probing them. They're even a source of information even
16 if they don't think they're being a source of information.

17 He was giving us background in terms of Allison that
18 we didn't know. He was giving us background about a number of
19 people that we didn't know or we could verify with third
20 parties.

21 Q Did you make efforts to check out or verify what it is
22 that he was telling you?

23 A We sought to check out everything he told us. We either
24 got confirmation or we didn't.

25 Q Do you remember getting a call from Selwyn Vaughn on

Simel s-direct-Shargel

1417

1 July 9th, 2008 where he said in actual words that he's
2 penetrated the heart of the case, penetrated the heart being
3 his words; that he has exciting news for you? Do you remember
4 that?

5 A I remember the call.

6 Q When did you finally meet with him? Remind us when you
7 finally met with him on the topic of penetrating the heart and
8 exciting news.

9 A Nine days later, July 18th.

10 Q What did he tell you on July 18th?

11 A He told me when he came in --

12 MR. SHARGEL: Actually, could we put it on the
13 screen, July 18th?

14 Q Is this as you understood it the exciting news he had to
15 tell you?

16 A This, I gathered, was the exciting news he had.

17 Q Tells you right. Clarke is willing to play, but he want
18 to know, what you want he do? What's in it for him?

19 A Yes.

20 Q Your response, Clarke is willing to take a plea and not
21 cooperate you mean? What was that?

22 A He had a little bit of an accent, have a little bit of
23 hearing problem. Maybe I heard the word "play" as "plea".

24 Q Vaughn clarifies, he says he's willing, he's willing to
25 play. Well, I mean about what he wants to know exactly you

Simel s-direct-Shargel

1418

1 know, what he'd be required to do and what's in it for him. I
2 at any time go to see him as yet became let me talk to you
3 first and then -- what does he want? That's the key, I mean.
4 You continue the conversation.

5 A Right.

6 Q I believe this is in evidence.

7 Did you have in mind before Selwyn Vaughn walks into
8 the room that you were going to bribe David Clarke or bribe
9 anyone else?

10 A No, the only thing he was supposed to be doing for me was
11 finding people.

12 Q Why did you continue the conversation after this? Why
13 didn't you kick him out of the room?

14 A I thought it would be really helpful to us. If I thought
15 a witness was trying to extort money from us, just like
16 Mr. Ricco was talking about, it's a very major step for us.
17 If we could have gotten evidence of David Clarke, in
18 conjunction with Leslyn Camacho was trying to solicit money
19 from us, whether it be \$100 or 5,000 or 10,000, whatever it
20 would be, it would be in Roger Khan's interest, my client's
21 interest. If I could develop that information, give it to the
22 government at some point or expose him on the witness stand,
23 David Clarke, that would be a home run for us.

24 Q Have you heard the expression, a "sting operation"?

25 A Many times.

Simel s-direct-Shargel

1419

1 Q What did you understand it to mean?

2 A It meant I was pretending to go along with their plan so
3 that we could develop evidence of what they want and
4 specifically what they wanted, not what we were going to
5 offer.

6 Q Did you ever intend to actually pay money to Leslyn
7 Camacho or David Clarke?

8 A Not a cent.

9 Q There were many calls and we could kind of summarize it,
10 but just for context, there were many calls that were going
11 back and forth trying to arrange payment of money; do you
12 recall those?

13 A I do.

14 Q What did you see as the issue? Tell us what was going on
15 in this series of calls between this meeting on July 18th and
16 actually right through to your arrest on September 10th. What
17 was going on?

18 A I told Vaughn to be very careful in the way he approached
19 this matter; that the request hadn't come from them, not as
20 though we were offering. He began to call me and met with me
21 again on July 30th, but contact me about this bribe that they
22 were soliciting. I wanted to make sure that we were following
23 what we had to follow. This guy is an unlicensed
24 investigator, somewhat of a maverick, in my view. I want to
25 keep him under control. Yet, I have to let him have the

Simel s-direct-Shargel

1420

1 opportunity to play this thing out.

2 Q Why didn't you simply, as he suggested more than once,
3 why didn't you simply give the money to Selwyn Vaughn rather
4 than Leslyn Camacho?

5 A Because I have no desire to, one, pay anybody any money;
6 two, getting Leslyn Camacho to accept money was not the
7 object. She was not going to be a witness in the case. The
8 object was to get David Clarke to make the request, whether it
9 was through her or David Clarke directly himself.

10 MR. SHARGEL: Might we have Government Exhibit 814
11 on the screen? Please highlight the last one -- actually, if
12 you would highlight the last bullet.

13 Q This is a memorandum of a meeting with Roger Khan. Did
14 you understand when you received this memorandum, in evidence,
15 R K is Roger Khan?

16 A Yes.

17 Q Wanted to know if we could record Leslyn's meeting with
18 us, is that it?

19 A Yes.

20 Q Actually going further up the bullet above, there's
21 mention of the fact Leslyn was coming to the office?

22 A Yes.

23 Q It's on the top part. Leslyn Camacho, the third bullet
24 is going to come see us next week, yes?

25 A I see that.

Simel s-direct-Shargel

1421

1 Q After that, you have the bullet that says, as you said,
2 Roger Khan wants to know if you could record Leslyn's
3 meetings.

4 A Yes.

5 Q Did you intend with this sting operation to record Leslyn
6 Camacho?

7 A It was my intention when and if she showed up to the
8 office to tape record her. We have many, available and ready
9 for her; that she came in, I could get her to tell us on tape
10 that she was seeking money on behalf of Clarke, that was a
11 step in our direction towards getting to Clarke and proving to
12 the government that we had been extorted.

13 Q Let me show you what's been marked for identification as
14 S 350 for identification. Do you recognize that?

15 A I do.

16 Q What do you recognize it to be?

17 A This was a drawer in my office, a number of items,
18 including a tape recorder on the far lower right side.

19 Q We heard testimony at the time of the search and arrest
20 on September 10th, 2008, the agents took photographs
21 throughout the office suite actually?

22 A Correct.

23 Q This is one of the photographs that was provided to us by
24 the government as a picture taken on September 10th, 2008?

25 A Yes, this is their photo.

Simel s-direct-Shargel

1422

1 Q Which room is this in in the office suite?

2 A The area where I physically sit in my office space.

3 Q This item --

4 MR. SHARGEL: Offered into evidence, your Honor.

5 THE COURT: Any objection?

6 MR. D'ALESSANDRO: No, your Honor.

7 THE COURT: Received, S 350.

8 (So marked.)

9 Q This item over here, what is that item?

10 A Tape recording device, digital tape recording device.

11 Q Was that workable, fully operable on September 10th,
12 2008?

13 A Yes.

14 Q Tell us what you intended to do with this tape recorder.

15 A To record Leslyn Camacho as Mr. Khan mentioned to Arienne
16 Irving.

17 Q You never met Leslyn Camacho, right?

18 A Never met her.

19 Q What time was the meeting finally scheduled? Had it been
20 changed a few times, correct?

21 A He told us he was going to bring her in the week before,
22 didn't show up with her. He called, said he forgot. He was
23 going out of town, told us he could do it the next week,
24 called my office to set up an appointment to come in. I think
25 it was set for 1:30 in the afternoon.

Simel s-direct-Shargel

1423

1 Q At the time that you were arrested -- when were you
2 arrested?

3 A About 12:30, thereabouts.

4 Q An hour before the scheduled appointment?

5 A Yes.

6 Q When you were arrested, how much money did you have in
7 your pocket?

8 A \$110.

9 Q There was, as we saw at the conference room table a
10 proposed affidavit?

11 A Yes.

12 Q What was the intention of having the affidavit, the
13 proposed affidavit?

14 A Depending how the meeting went with Leslyn, if she showed
15 up. If she read through the affidavit, didn't want to give us
16 any corrections that might be appropriate, I was putting in
17 everything I knew about David. If she didn't sign it, said I
18 don't know this, I don't know that, can you modify that, we
19 would have done that. If she said to us I'm not signing
20 anything, I would hand her the \$40 check and the subpoena.
21 She would at least have had that information in her head, all
22 that I knew about David Clarke, so when she next went to see
23 David Clarke at the Queens prison, she could tell David
24 Clarke, you know, they know about the murders, this, know
25 about that. You better think about that.

Simel s-di rect-Shargel

1424

1 Q Mr. Simel s, was there a time that Selwyn Vaughn on the
2 recorded conversations made a suggestion that you come out to
3 Queens or wherever to meet Leslyn Camacho?

4 A Yes, we discussed that.

5 Q Do you remember telling him that you won't have a printer
6 if you go out?

7 A Correct.

8 Q What did that signify, the fact you wouldn't have a
9 printer? Why would you need a printer if she was going to
10 sign what you put in front of her?

11 A I didn't want her to sign what I put in front of her,
12 only what she knew. She has to tell us what's right, not
13 right. That's why I left blanks in it. I would have no idea
14 how many boyfriends, girlfriends this guy had or for how long
15 he had known her or what she knew or didn't know. Once she
16 gave me the information, if she was willing to sign an
17 affidavit, we would have printed it out at the office. I
18 couldn't do that in the field.

19 Q What else did you prepare for her that day?

20 A A subpoena, a federal subpoena to appear as a witness in
21 the federal courthouse, as well a \$40 check, a witness fee
22 which is required when you serve a subpoena.

23 Q There's been testimony in the case about a locked drawer
24 in your office; do you recall that?

25 A Yes.

Simel s-direct-Shargel

1425

1 Q There were photographs of the contents of the locked
2 drawer, correct?

3 A Yes.

4 Q The contents of the locked drawer, some of the contents
5 were admitted as well, right?

6 A Yes.

7 Q There was \$2,500 in a white plastic bag with a smiley
8 face on it.

9 A Correct.

10 Q Was that money to pay Leslyn Camacho?

11 A No.

12 Q We heard testimony about a blue Post-It that said Khan
13 and then a dollar sign?

14 A Correct.

15 Q Was that -- by the way, was that your handwriting?

16 A No.

17 Q Was that anyone else's handwriting in your office?

18 A It was not Arienne Irving's handwriting as well.

19 It was from the secretary who had been terminated months
20 before.

21 Q When is the last time you had Khan money in that drawer?

22 A About two weeks before I was arrested, we received money.
23 I deposited that money. It was kept in the drawer overnight
24 so it would be in a safe place before it went to the bank.

25 Q What money was that?

Si mel s-di rect-Shargel

1426

1 A I believe \$25,000.

2 Q May I put before you what is marked as Defense Exhibit?

3 S 352 for identification. Do you recognize S 352 for
4 identification?

5 A I do.

6 Q What do you recognize it to be?

7 A It's a Currency Transaction Report that was filled out by
8 the bank when I deposited the \$25,000 on August 28th, 2008.

9 Q The money in the white plastic bag, who did that belong
10 to?

11 MR. SHARGEL: I'm sorry, I'll offer that into
12 evidence.

13 THE COURT: Any objection?

14 MR. D'ALESSANDRO: No.

15 THE COURT: Received.

16 (So marked.)

17 Q Who did the money in the white plastic bag belong to?

18 A I met with a client named Rafael Morgan on September 6th
19 who had a case pending in Arizona, wanted us to work on the
20 case and I was trying to not work on the case but to get him
21 an Arizona attorney. He had given us \$2500 for consultation.
22 I put it in the drawer to be deposited.

23 Q What is the fee Roger Khan agreed to pay you for your
24 services in connection with this matter?

25 A He initially agreed to pay us one fee. That changed over

Simel s-direct-Shargel

1427

1 the course of time as the case expanded.

2 Q Be specific. What is the one fee he agreed to pay?

3 A I think he was originally supposed to pay us, which
4 included the cost of investigators, all the other expenses,
5 \$1,250,000, somewhere around that number.

6 Q How much did he ultimately pay you?

7 A I think he paid us \$1,200,000 or thereabouts.

8 Q How much did he owe you as of September 10th, 2008?

9 A He owed about \$1,450,000 to cover the costs of all the
10 other attorneys, all the other investigators, experts, my fees
11 for the trial coming up.

12 Q Did you tell Roger Khan during the course of this summer
13 that you were going to withdraw from the case?

14 A That was a constant source of discussion between Mr. Khan
15 and I. I reached a point where I could no longer work on this
16 case with the amount of costs that we were incurring. Every
17 dollar that was coming in was going out as an expenditure to
18 third parties, to Mr. White, Mr. Dubin, Michael Levine, our
19 expert who was going to testify at the trial, every expert,
20 court reporter but not to us. We were getting no money for
21 our own overhead. So, I kept telling Mr. Khan and his brother
22 and Paul Rodriguez and everybody else who was participating in
23 getting money, that we were going to withdraw from the case
24 and in fact told them I was going to resign as of the end of
25 the first week of September but I had to make an application

Simel s-direct-Shargel

1428

1 to the court first to do so.

2 Q Tell us how that works. Can you with a walk off the
3 case, see you later, I'm not your lawyer anymore?

4 A Particularly in a federal case you could not do that.
5 You have to get permission of the court. I thought I needed
6 to have an answer by early September so that I could make an
7 application to Judge Irizarry if he was not going to pay us,
8 pay for the investigators, pay for the services he wanted in
9 court; that at least I could make an application to Judge
10 Irizarry, hope she would let me off the case so that he could
11 get other counsel in time for the October 27th meeting --
12 excuse me, October 27th court date or she would adjourn it for
13 a few more months.

14 Mr. White was available to try the case in January.
15 He was apparently willing to. The concept I would withdraw,
16 Mr. White stays in, he proceeds in January.

17 Q Did you tell Mr. Khan that the lawyers were working on
18 the case no longer wanted to work because they hadn't received
19 the agreed-upon fees?

20 A I told him Darmuid White had basically abandoned the
21 project; that Josh Dubin, who he was asking to do many things
22 said to me unless he gets money up front, another 50,000 or
23 \$100,000 up front, would not do anything. I told him he was
24 walking away. I told him Mike Levine was walking away.

25 Q Levine was who?

Simel s-direct-Shargel

1429

1 A A drug enforcement agent working on the case with us --
2 former. He used to be an expert witness and to prove --

3 Q That's all we need.

4 A Okay.

5 Q Let me show you what's been marked as S 314-E for
6 identification. I ask if you recognize this.

7 A An e-mail I sent to the brother of Roger Khan with a copy
8 to the former FBI agent who was working on the case.

9 MR. SHARGEL: Offer this into evidence you.

10 THE COURT: Any objection?

11 MR. D'ALESSANDRO: No objection.

12 THE COURT: Received.

13 (So marked.)

14 MR. SHARGEL: May I publish this?

15 THE COURT: Yes.

16 Q This was written on August 28th, 2008. You say to
17 Rafeek Khan everyone is jumping off the ship, my DEA expert
18 advises me today he's quitting, handwriting expert will do
19 nothing further. You had need for a handwriting person in the
20 case?

21 A Yes.

22 Q And Darmuid has stopped working for the most part. I
23 said at the end of the month I was shutting down and I will
24 have to focus on paying clients. I don't understand the
25 difficulty. While appreciating we're talking about a lot of

Simel s-direct-Shargel

1430

1 money, we're approaching trial. I sent money to Vic, Paul,
2 Reagan, Sean and I'm getting nothing in return. What was that
3 money for?

4 A Vic, his lawyer, wanted money that we had had to file as
5 filing fees with regard to the Rule 15 depositions in Guyana.

6 Q Were the Rule 15 depositions an expensive proposition?

7 A Very expensive. We had to pay for the costs not only of
8 court reporters going to Guyana and a DVD person going to
9 Guyana to video or shoot the proceeding, but we had to pay for
10 the government's travel, had to pay for their accommodations,
11 pay for the video conferencing setup, wanted a video
12 conference to have it beamed back to New York to this
13 courthouse. All of that was part of our expense.

14 Q When you say the government's travel, you're talking
15 about the prosecutors in that case?

16 A The prosecutors and case agent, yes.

17 Q Vic doesn't check in, I'm being told the only way the
18 deposition order will be signed by the Guyanese courts -- did
19 you need the cooperation of the Guyanese Court's as well?

20 A Yes, when the Rule 15 order was signed by Judge Irizarry,
21 it then goes to our State Department which then makes a
22 request of the Guyanese government. The Guyanese courts have
23 to sign off on it directing the people show up for the
24 proceedings.

25 Q The deposition order will be signed by the Guyanese

Simel s-direct-Shargel

1431

1 courts that will allow it to happen is for me to come and
2 speak to the Oracle. I'm not going anywhere without the fund
3 issue resolved. Does that mean the payment?

4 A The payments.

5 Q If we don't get those depositions, it will greatly hurt
6 us at trial. Is that true?

7 A That's true.

8 Q I'll show you one more document for identification,
9 marked for identification only, 314-F. Do you recognize
10 314-F?

11 A I do.

12 Q What do you recognize it to be?

13 A It's an e-mail that I sent to Roger Khan's brother,
14 Rafeek, on September 2nd, 2008.

15 MR. SHARGEL: Offered into evidence.

16 THE COURT: Any objection?

17 MR. D'ALESSANDRO: One moment, your Honor.

18 (Pause.)

19 MR. SHARGEL: May I have a word with

20 Mr. D'Allessandro?

21 THE COURT: Yes.

22 (Pause.)

23 THE COURT: What's happening?

24 MR. D'ALESSANDRO: Additional information. No
25 objection, your Honor.

Simel s-direct-Shargel

1432

1 THE COURT: Received, 314-F.

2 (So marked.)

3 Q This is dated September 2nd, a few days after the last
4 E-mail. This is, again, to Rafeek Khan, the brother?

5 A Yes.

6 Q I'm going to see Roger on Friday. I will advise him at
7 that time I'm going to resign. I'm under the impression that
8 everyone thinks Roger will ultimately plead guilty. The
9 government has advised they will not accept a plea for less
10 than 20 years. Roger has understandably rejected that course.
11 I simply cannot continue with promises of payment.

12 That was written by you?

13 A Yes.

14 Q What's your recollection of how many hours you had been
15 working on this case, you and Ms. Irving, since August of 2006
16 right up to the day you were arrested?

17 A Almost 3800 hours.

18 Q The trial was expected to last how long?

19 A Approximately three months.

20 Q Three months every day?

21 A Three months every day.

22 Q Here are my final questions to you. In all the hours
23 that you were in recorded conversation with Selwyn Vaughn,
24 during any of those conversations or by anything you said, did
25 you intend to violate the law?

Simel s-direct-Shargel

1433

1 A No.

2 Q Did you intend to encourage false testimony on the
3 witness stand?

4 A Never.

5 Q Did you encourage people to absent themselves from a
6 trial?

7 A No.

8 Q Did you intend to corrupt any person in any way?

9 A No.

10 Q When you went to visit David Clarke in the Queens
11 facility, did you lie to that corrections officer?

12 A I did not.

13 Q Did you know that when the base was brought to the United
14 States that that was somehow violating the law?

15 A No.

16 Q Did you think the lap tops, the Panasonic Tough Brooks
17 were somehow there to record conversations?

18 A No.

19 MR. SHARGEL: I have no further questions, your
20 Honor.

21 THE COURT: Thank you, Mr. Shargel.

22 Mr. D'Allessandro, what's your preference, want to
23 start now, take a break in a few minutes or take a break now?

24 MR. D'ALESSANDRO: Let's start now if I may?

25

Simel s-cross-D' Al essandro

1434

1 CROSS-EXAMI NATION

2 BY MR. D' ALESSANDRO:

3 Q Good morning, Mr. Simel s. My name i s Steven

4 D' Al essandro. We' ve never met before, right?

5 A I' ve seen you for the last year.

6 Q Never been introduced before?

7 A No, we haven' t been formally introduced.

8 Q We just saw some e-mail traffic about you telling Rafeek

9 Khan, Roger Khan' s brother, right?

10 A Yes.

11 Q And you were threatening to withdraw from the case,
12 right?

13 A Yes.

14 Q You explained to the jury that you can' t just say I' m
15 done and walk away, right?

16 A That' s correct.

17 Q You have to apply to the judge, right?

18 A Correct.

19 Q The judge deci des, right?

20 A Yes.

21 Q The Roger Khan case had already been adjourned for trial
22 once, correct?

23 A By the court, yes.

24 Q By the court. It was adjourned once, yes?

25 A Yes.

Simel s-cross-D' Al essandro

1435

1 Q Jury selection was scheduled to begin in October of 2008,
2 correct?

3 A Actually November 3rd.

4 Q Jury selection is part of the trial, correct?

5 A Yes.

6 Q You knew when filing this application you weren't going
7 to get off the case?

8 A Actually, I thought I would get off the case. I thought
9 Judge Irizarry --

10 Q It's a yes or no question.

11 A I thought I would get off the case.

12 Q You thought you would get off the case even though the
13 trial had already been adjourned once. There were foreign
14 dispositions scheduled. There were three months. The trial
15 was going to be three months, like the actual -- from the
16 first day of testimony until the end was supposed to be three
17 months?

18 A That's what we anticipated, yes.

19 Q Plus jury selection?

20 A Yes.

21 Q All this time blocked out by the government, the defense
22 and by the court and it was your impression that filing an
23 application, you were confident you were going to get off the
24 case; yes or no?

25 A I was very confident, yes.

Simel s-cross-D' Al essandro

1436

1 Q I want to briefly address this issue with regards to
2 Leslyn Camacho. She was coming in and your intention was to
3 get her on tape, correct?

4 A If we could.

5 Q If you could get her on tape, it was to get her to offer
6 to say whatever you wanted her for money, right?

7 A No, I wanted her to solicit a bribe from me.

8 Q The bribe would be I'll say whatever you want me to say
9 if you give me money, right?

10 A Well, her and David Clarke -- I'm not interested in her.
11 She wasn't going to be a witness.

12 Q You understand that offering to pay someone money for
13 their testimony is a crime, right?

14 A I wasn't going to offer anybody to pay --

15 Q Yes or no question.

16 You understand that paying a witness money for their
17 testimony is a crime, correct?

18 A Paying for false testimony, yes, that's a crime.

19 Q Paying for any testimony is a crime.

20 A Well, we always pay to have people appear. That's a
21 different issue.

22 Q Let's be specific. Beyond the \$40 witness fee, beyond
23 that, your understanding is beyond that. Paying for a person
24 to testify is a crime, correct?

25 A I would say yes.

Simel s-cross-D' Al essandro

1437

1 Q Not that hard. 5,000, or 10,000 or \$20,000 for someone
2 to testify -- not talking expert witnesses -- that's a
3 crime, right?

4 A If I was offering somebody money, is that what you're
5 asking?

6 Q What I'm asking you, if a person offers a witness money,
7 5,000 or 10,000 or \$20,000 for their testimony, that is a
8 crime, yes or no?

9 A I would assume it would be.

10 Q You assume it or is it a crime?

11 A It's a crime.

12 Q You worked for the DA's office; is that right, at one
13 point, the Special Prosecutors's office?

14 A Yes.

15 Q You know about how to conduct an investigation or
16 investigations?

17 A I think I do.

18 Q You understand part of the issue that's ultimately
19 decided when doing an investigation is whether or not a person
20 knows they're committing a crime, right?

21 A That's a factor, yes.

22 Q It is a factor, yes?

23 A Yes.

24 Q So, one of your intentions is to bring Leslyn Camacho in
25 to see if she's going to solicit from you a bribe and if she

Simel s-cross-D' Al essandro

1438

1 does, you want to get it on tape, correct?

2 A That's correct.

3 Q For that to have any weight, she needs to understand
4 it's a crime, right?

5 A No.

6 Q It's your understanding that this, for lack of a better
7 description, sting, is going to discredit people if this woman
8 comes in, she asks for money thinking it's perfectly legal
9 what she's doing?

10 A Concept would be my saying to here I understand you want
11 to ask me something. Let her say to me what it is she wanted.
12 If she said to me I want money and David Clarke wants money to
13 testify in a certain way, that would be good. I would think I
14 would have enough to go to the prosecutor's office, your
15 office or anybody else and establish they were trying to
16 commit a crime.

17 Q But in order for a crime to have been committed, the
18 person needs to understand what they're doing is a crime, yes
19 or no?

20 A That would be for your office to decide whether they
21 would prosecute. It would only be for me to have her say it.

22 Q She could say anything and then you're going to run.
23 Your interest is not whether or not there's any merit to it.
24 You want to get her on tape saying something, you're going to
25 run to my office?

Simel s-cross-D' Al essandro

1439

1 A The person comes to me and says I want \$5,000 or \$10,000
2 and David Clarke will change his testimony, I've arranged that
3 with him, yes, I think that would be enough for your office to
4 consider whether to investigate David Clarke.

5 Q Wouldn't it be for my office to make a decision whether
6 that person committed a crime for them to know whether or not
7 they knew what they were doing was illegal; yes or no?

8 A That would be up to you.

9 MR. SHARGEL: Excuse me. If that's the tone
10 that's going to be set for the whole cross-examination, I
11 object.

12 THE COURT: He's got a good point. No need to
13 yell.

14 MR. D'ALESSANDRO: Very well, your Honor.

15 Q Yes or no. It's important for my office to make a
16 decision whether or not these people committed a crime? It
17 would be important for us to know whether or not they knew
18 what they were doing was illegal; yes or no?

19 A Based upon what I said, I think you would be able to
20 conclude what they were doing was illegal.

21 MR. D'ALESSANDRO: Could you please direct the
22 witness to answer my question?

23 THE COURT: Is that the best answer you could give?

24 A Yes, I guess your office would have to conclude they
25 thought they were up to no good, criminal conduct.

Simel s-cross-D' Al essandro

1440

1 Q So, evidence they knew what they were doing would be
2 relevant, correct, what they were doing was illegal, would be
3 relevant, correct?

4 A Yes, that's what I hoped to solicit.

5 Q On the contrary, if there was evidence that the person
6 didn't know what they were doing was illegal, that was also to
7 be important, correct?

8 A Yes.

9 Q In fact, that would also be something you would want to
10 bring to our attention, correct?

11 A You don't want somebody falsely prosecuted, right?

12 MR. SHARGEL: I object to the form of the question.

13 THE COURT: Overruled.

14 A I don't follow your example, sir. I'm sorry.

15 Q Let me take it step by step. If you agree with me that
16 it's important for my office, in determining whether or not to
17 prosecute someone, for us to understand whether or not what
18 they're doing on tape you're trying to capture them on is a
19 crime. With me so far?

20 A Yes.

21 Q Fair to say that, yes?

22 A Yes.

23 Q By the same token, if there was evidence that the person
24 didn't know what they were doing was a crime, that would also
25 be important, correct?

Simel s-cross-D' Al essandro

1441

1 A I don't figure out how someone would not know what they
2 were doing when soliciting money from me for testimony.

3 Q If somebody told them it's not a crime, that's how
4 somebody could know, correct?

5 A I think I was experienced enough to be able to get out of
6 Leslyn Camacho enough detailed information that your office
7 could have used.

8 Q Please answer my question.

9 If somebody told that person that what they were
10 doing was not a crime, that would be important evidence for my
11 office to have in determining whether or not the person
12 committed a crime; yes or no?

13 A I can't answer that. I don't know how your office would
14 evaluate that.

15 Q You don't know how a prosecutor's office would evaluate
16 evidence of whether or not a person understood what they were
17 doing was a crime?

18 A In the example you're giving me, yes. I can't answer how
19 that would have happened. I wouldn't know that information to
20 be able to give you. If Leslyn Camacho came in and said to me
21 I want money and David Clarke wants money to testify a certain
22 way at Roger Khan's trial, I would think you, in your office,
23 would have plenty to work with.

24 Q All we would have would be that little snippet, right,
25 what you decided to record; yes or no?

Si mel s-cross-D' Al essandro

1442

1 A Depending on how long the conversation went on, for 45
2 minutes or an hour, you would have an hour's worth of tape.

3 Q Only when you decide to hit record and stop, correct?

4 A If I edited the tape, I couldn't come to you with it,
5 could I? You're not supposed to have edited tapes when you
6 present evidence.

7 Q The tape that you would present to my office would be
8 created by you; yes or no?

9 A Yes, it would be started the same way the tapes were
10 started in this case, start and when the conversation ended,
11 when the person walked out, we would say the time is now
12 blank-blank. The person now left the office. That would be
13 the end of the tape. If it ran an hour and a half or ran
14 20 minutes or 5 minutes, you would have the entirety of the
15 tape.

16 Q What we would have is just that tape, yes?

17 A If I came to you at that point, yes.

18 Q I want to put on the screen R-13 -- one moment.

19 (Pause.)

20 Q This is page 9, line 37.

21 MR. D'ALESSANDRO: It's in evidence, your Honor.

22 Q I'll put this on the screen, a portion of the transcript
23 of the July 30th meeting between yourself and Selwyn Vaughn.
24 For the record, it's 401 T-26, on page 9, line 37. You say
25 she's interested in getting paid for her time to come. I'll

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1 give her \$500 to come in and meet with us, signs the document,
2 she gets the other, she'll get half the money. By then when
3 she testifies, she gets the other half. But on the other side
4 of the coin, she has to understand I'm not paying her to bribe
5 her as a witness. I don't want her to say anything that's
6 theoretically untrue. So, you know if you pay a witness for
7 their testimony, it's a crime. You pay them because you're
8 paying them because of a witness fee because you want her to
9 assist us when she wouldn't otherwise, those are lawful
10 payments for us. I just want to make sure we're all talking
11 on the same page here. She has to understand, I mean, and you
12 continue about her flying off to Guyana tomorrow.

13 Sir, if the government hadn't recorded that, you
14 wouldn't have known about that, correct?

15 A Yes.

16 Q What the government would be presented with was a
17 recording in which you say, hopefully, Leslyn Camacho would
18 say to give me money and we'll testify the way you want,
19 correct?

20 A Something of that nature, yes.

21 Q But the government wouldn't have this which is your
22 direction to Selwyn Vaughn to explain to this woman it's okay,
23 5,000, \$10,000, for you to testify, it's okay. It's a lawful
24 payment, correct?

25 A That's not what this says.

Simel s-cross-D' Al essandro

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1 Q You say by then when she testifies she gets the other
2 half but on the other side of the coin, and it talks about the
3 first part of it, if she signs the document, she gets the
4 other, she will get half the money. That's half of the
5 \$10,000 being negotiated, that's \$5,000?

6 A That wasn't being negotiated. That's what I was luring
7 her in with based upon what he told me based on your
8 suggestion of July, 2008.

9 Q She's coming into your office, thinking it's perfectly
10 appropriate to get \$5,000 to sign this document because a
11 lawyer told me it's okay?

12 A She's not thinking that from me.

13 Q She's thinking that from Selwyn Vaughn getting it from
14 you, correct?

15 A If you recall, July 18th, you sent him in. He says to me
16 she says, Leslyn says and David say they want to play; that
17 they want money for their testimony. That's what you had your
18 person present to me. So, I respond sure, if they want to
19 bribe, they want to extort me, let's play the game.

20 Q But if a lawyer interjects and tells that person it's
21 perfectly legal, what is about to happen is perfectly legal,
22 how is that a crime?

23 A I didn't interject.

24 Q You interjected through Selwyn Vaughn, asked Vaughn to
25 instruct this woman this is lawful, come into my office, take

Simel s-cross-D' Al essandro

1445

1 the money.

2 A No. As you recall, I'm sort of luring him in here
3 telling him she doesn't want to come in because I'm not going
4 to give her the money. You all ask me to give the money up
5 front, I wouldn't do that because I wanted to meet this woman.
6 Therefore, I said I'll give her 250 or \$500, her day's time,
7 day's work time to come in and meet with me. Further lure,
8 I'll give her the \$500 because she walks into the door, never
9 did any of that, never had the intention, didn't have the
10 money, wasn't going to do it.

11 THE COURT: Would this be a good time for a break?

12 MR. D'ALESSANDRO: Yes.

13 THE COURT: Don't discuss the case. We'll resume
14 in ten minutes. All rise.

15 (Jury leaves courtroom.)

16 (Recess.)

17 (Jury enters courtroom.)

18 Q Mr. Simel s, before the break we were di scussing
19 Lesl yn Camacho; do you recall?

20 A Yes.

21 Q It's your testimony you were never going to give her any
22 money for her testimony; is that right?

23 A Other than the \$40 witness fee; yes, sir, that's correct.

24 Q You weren't going to pay her in July; is that correct?

25 A That's correct.

Simel s-cross-D' Al essandro

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1 Q Weren't going to pay her in August?

2 A Correct.

3 Q Weren't going to pay her when she was walking through the
4 door, correct?

5 A That's correct.

6 Q You're aware -- well, it's stipulated you visited Roger
7 Khan on July 29th, 2008 at the MCC.

8 A That's correct.

9 Q You met him in the visiting room, correct?

10 A Myself and Josh Dubin, the jury consultant attorney, both
11 of us met him that day, yes.

12 Q Josh Dubin wasn't there for the whole meeting, was he?

13 A He left at a certain point. I remained there, yes.

14 Q There was a part of the meeting in which it was just you
15 and Mr. Khan, correct?

16 A That's correct.

17 Q The visiting room at the MCC for attorneys, it's a
18 private room, correct?

19 A It's supposed to be.

20 Q It's designed that way so you could have open and frank
21 conversations with your clients, right?

22 A Supposed to be.

23 Q It's supposed to be that way. You don't believe at the
24 time you're having conversations those are being listened to
25 at all, correct?

Simel s-cross-D' Al essandro

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1 A Certainly not by the government.

2 Q Did there come a point you learned that your meeting on
3 July 29th, 2008 was in fact recorded?

4 A After I was arrested.

5 MR. D' ALESSANDRO: At this time the government
6 would offer Government Exhibit -- we'll caught it 900 -- let's
7 say 1000.

8 THE COURT: Okay.

9 MR. SHARGEL: Note my objection.

10 THE COURT: The objection I already ruled on. This
11 is received.

12 (So marked.)

13 MR. D' ALESSANDRO: Might I have a moment, your
14 Honor?

15 THE COURT: Yes.

16 (Pause.)

17 MR. D' ALESSANDRO: There's a transcript that I
18 could put up on the Elmo?

19 THE COURT: You may.

20 MR. SHARGEL: Might we have an instruction with
21 regard to the transcript, this transcript is offered by the
22 government as an aide?

23 THE COURT: Yes.

24 The instruction I gave you before applies here as
25 well; that should there be any difference between what you

Simel s-cross-D' Al essandro

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1 hear on the tape and what you see on the transcripts that the
2 government is putting on the overhead as an aide, it's the
3 tape that's the evidence, not the transcript.

4 That's the instruction you want?

5 MR. SHARGEL: Yes, sir.

6 THE COURT: Are you going to play the tape.

7 MR. D' ALESSANDRO: 21 minutes, 48 seconds.

8 (Audio played.)

9 (Continued on next page.)

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Simel s - cross/D' Al essandro

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1 (Tape stops.)

2 BY MR. D' ALESSANDRO:

3 Q That is you and Mr. Khan speaking, correct? Recognize
4 those voices?

5 A It appears to be, yes.

6 Q And you're talking about Leslyn Camacho in that portion
7 of the conversation, aren't you?

8 A No, actually if you really heard it or you were there
9 rather than what's --

10 Q A yes or no question.

11 A The answer is no.

12 Q And you are actually discussing, when you say -- I will
13 direct you specifically to it -- when you talk about money
14 theoretically in case she's for real, you're telling Roger
15 Khan, You gotta get me money in case Leslyn Camacho is willing
16 to come in and say what we want to say so I have that money;
17 correct?

18 A 100 percent not true. If you had --

19 THE COURT: Don't volunteer.

20 THE WITNESS: I'm sorry, your Honor.

21 THE COURT: Mr. Shargel can conduct a redirect if he
22 wants, but Mr. D'Alessandro has a right to insist that you
23 answer only the questions he poses.

24 THE WITNESS: I apologize, your Honor.

25 Q The reason why you're going to Roger Khan for this money

Simel s - cross/D' Al essandro

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1 is because he's late with his fees; correct?

2 A Since my answer to the prior question was no, the answer
3 to this question would be no as well.

4 Q Roger Khan is behind on the amount of money he owes you;
5 correct?

6 A At that time, yes, July 29, correct.

7 Q You are paying monies for attorneys, right, the money
8 that's coming in you're giving to other counsel, correct?

9 A Correct.

10 Q You have investigators that want money. Money that comes
11 in you pay the investigators; correct?

12 A Correct.

13 Q Transcripts, money comes in goes to the court reporter,
14 correct?

15 A Correct.

16 Q WestLaw to do research, comes in, going out, right?

17 A Correct.

18 Q Nothing in your pocket, right?

19 A Not really.

20 Q So if there's an expense to pay for this woman Leslyn
21 Camacho in case she's for real, you are not reaching into your
22 pocket anymore; correct?

23 A No, that's not what it says.

24 Q And you are trying to explain in this conversation, isn't
25 it correct, sir, of how important this is and Roger Khan

Simel s - cross/D' Al essandro

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1 explains it is, because he understands, I could go away to
2 jail for a hundred years, bro.

3 Did you hear that portion of the conversation where
4 he says, I could go away for a hundred years, bro?

5 A He was concerned about losing me as his counsel, that's
6 what that was about.

7 Q He's concerned about going to jail, about losing the case
8 and going to jail for a hundred years; yes or no?

9 A He said that.

10 Q He said that. So did you have any reason to disbelieve
11 that he was afraid of going to jail for a hundred years?

12 A He was saying it in the context of my telling him I was
13 going to seek to withdraw from the case and he didn't want
14 other counsel besides me. The same way -- I won't respond.

15 Q Roger Khan, CCE, continuing criminal enterprise, correct,
16 that's what he's charged with?

17 A One of the 17 charges against him, yes.

18 Q A lot of charges this guy faces, fair to say, 17 charges
19 is a lot?

20 A It is.

21 Q If he's convicted life in jail; correct?

22 A Correct.

23 Q And life in the federal system is life, right?

24 A Yes.

25 Q It is lifetime prison without the possibility of parole,

Simel s - cross/D' Al essandro

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1 right?

2 A That was the charge he was charged with.

3 Q You bring to Roger Khan a key to the jail, Leslyn Camacho
4 is willing to say what we want her to say to get to David
5 Clarke but you gotta give me the money -- that's what you're
6 explaining to him here, right?

7 A 100 percent not true, sir.

8 Q And he understands the significance of this offer because
9 if we don't do this I could go to jail for hundred years,
10 right?

11 A Again, not true, sir.

12 MR. D' ALESSANDRO: Go on to 26:08 of the recording.

13 (Tape plays.)

14 (Tape stops.)

15 Q This is still you and Roger Khan talking, correct?

16 A Yes, sir.

17 Q And you begin this attribution by talking about, I have
18 to go back, August 1 is when I'm going to start my review,
19 right?

20 A That's part of the discussion, yes.

21 Q And you're talking about reviewing 3500 material for
22 witnesses; correct?

23 A That's part of the discussion, yes.

24 Q I don't mean to be difficult.

25 A Yes.

Simel s - cross/D' Al essandro

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1 Q I want to get clear answers from you.

2 A Yes. That's part of the discussion. This was a very
3 long tape.

4 Q I understand that. That's why I'm playing this portion.
5 I want to get the context right. What I'm asking you is that
6 when you're talking about August 1, which is this weekend,
7 you're going to start to review from Alicia, you're explaining
8 to Roger I'm going to start reviewing the 3500 material for
9 Alicia Jagnarain and others, correct?

10 A Yes.

11 Q You're scheduled to go see Saigo in where he's in South
12 Carolina. Saigo is a person that you believe to be a witness,
13 correct?

14 A No. He was not a witness. He was a witness who I was
15 hoping would deconstruct the government's case.

16 Q You say he wasn't going to be a witness but he was a
17 witness. I don't understand.

18 A I'll be glad to explain. Saigo --

19 Q I am not asking you to explain.

20 A I thought you said you didn't understand and wanted an
21 explanation. I'm glad to do so, sir.

22 Q Was Saigo a witness in the Roger Khan case?

23 A No.

24 Q A person that has information, they know something, fair
25 to say that person is a witness?

Simel s - cross/D' Al essandro

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1 A A witness is everybody I guess if you use that
2 nomenclature -- that term, people with information, sources of
3 information, you want to call them witnesses. Sometimes I do
4 sometimes I don't.

5 But certainly I thought Saigo was a person who was a
6 source of information and would critically harm the
7 prosecution's case against Roger Khan.

8 Q A person with information to critically hurt the
9 government's case, you don't consider them a witness?

10 A No. Because your case agent on the Roger Khan case had
11 worked with Mr. Saigo and made tape recordings of the people
12 in Guyana who had really imported the drugs and it was not
13 Roger Khan.

14 All I wanted to do was ask him questions about the
15 tape recordings that I had already obtained through other
16 counsel that I was going to use when your case agent got on
17 the witness stand to show he was creating a false impression.

18 Q This is a person who had information relevant to your
19 client. A person with information, fair to say that that is a
20 witness?

21 A No. Ray Denny was sent there specifically for the
22 purpose --

23 Q A yes or no question.

24 A No.

25 Q So if I see a crime occur, I'm there, I see it, I have

Simel s - cross/D' Al essandro

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1 information about that, that doesn't make me a witness, is
2 that what you're saying?

3 A Potentially that does.

4 Q Potentially that does. So a person that has information
5 though that could discredit the theory of the government's
6 case is not a witness?

7 A Correct. In this instance, yes, correct.

8 Q So not all people that have information which could help
9 the jury determine the truth is not a witness, in your view;
10 is that right?

11 A Not all people with information can be witnesses; that is
12 appear in a courtroom and testify. Sometimes they don't have
13 firsthand knowledge, sometimes their evidence is inadmissible
14 that the judge won't permit. Sometimes it's third party
15 hearsay. Sometimes you just want to follow the leads.

16 I wanted to follow the leads that Saigo could give
17 me because I had already heard his tape recordings between he
18 and Clayton Hudson and others in Guyana. I just wanted his
19 input on what he said on those tapes and what the agent had
20 said to him about why he wasn't being called at Roger Khan's
21 trial, that's what I wanted to know from Saigo.

22 Q Thank you. You say, you continue that George supposedly,
23 according to Fineman and Leslyn, is back in North Carolina.
24 See that?

25 A That's what your transcript says, yes.

Simel s - cross/D' Al essandro

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1 Q You didn't hear that?

2 A Something similar to that.

3 Q George is a reference to George Allison, correct?

4 A That's correct.

5 Q George Allison, Chinaman, correct?

6 A That would be correct.

7 Q Chinaman, George Allison, brother of Donald Allison,
8 correct?

9 A As far as I knew, yes..

10 Q Donald Allison murdered in Guyana; correct?

11 A Yes.

12 Q So and Fineman is a reference to Selwyn Vaughn, correct?

13 A Yes.

14 Q And Leslyn is a reference to Leslyn Camacho; correct?

15 A If it says Leslyn at that point, that would be correct.

16 But I also didn't write a letter to Leslyn, as you'll see at
17 the top of the next page, I wrote a letter to the prosecutor.

18 Q I didn't ask a question.

19 A Okay. That's why I don't think it says Leslyn.

20 THE COURT: Let me remind you of the instruction.

21 Don't volunteer additional information. Mr. Shargel will be
22 able to conduct a redirect.

23 THE WITNESS: Fine, your Honor.

24 THE COURT: Listen to the question posed and limit
25 your answer to the question posed.

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1 THE WITNESS: Yes, your Honor.

2 BY MR. D' ALESSANDRO:

3 Q You're talking about Fineman, talking about George
4 Allison, Fineman got the information, he's telling you, from
5 Leslyn Camacho; correct?

6 A Fineman told me he had information, he gave me
7 information about George Allison, why he.

8 Q The source of his information, he quite clearly told you,
9 was Leslyn Camacho, correct?

10 A One of the people he said he got information from about
11 George Allison, yes.

12 Q He specifically told you that Leslyn Camacho was going to
13 get you information about George Allison, correct?

14 A What he said is Leslyn Camacho has his telephone number,
15 that's what he said to me. She has his telephone number and
16 she's going to give me his telephone number. That's what I
17 thought I was getting from Leslyn Camacho.

18 Q So the next part where he says, if we can arrange this, I
19 mean if she wants it, I want to do it.

20 You're referring to Leslyn Camacho, she wants the
21 money for the bribe to say what you want her to say and help
22 your client, you want to do it; correct?

23 A No.

24 Q Khan responds to this by saying, she has to lower the
25 amount; did you hear that?

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1 A Not referring to Leslyn Camacho, but, yes.

2 Q She has to lower the amount -- you understood that's what
3 he said; correct?

4 A We were in plea discussions, we were talking about
5 amounts, yes.

6 Q You say hum. He says she has to lower the amount. He
7 then says there'll be other days, and just to jump ahead, you
8 say, you know I wrote her a stinging letter. That's in
9 reference to an AUSA, correct?

10 A The stinging letter was with regard to, I think ei ther
11 Shannon Jones or Paige Peterson.

12 Q When you say her you're referring to Shannon Jones or
13 Paige Peterson --

14 A I could have been saying I was writing to Judge Irizzary,
15 I'm not sure of the context because it's inaudible. That's my
16 recollection as to what I was talking about that day is the
17 government's failure to provide us transcripts in a timely
18 fashi on.

19 Q So it was either the assistant or the court, somebody you
20 wrote a stinging letter to, right?

21 A Yes.

22 Q When Khan says she has to lower the amount, she has to
23 lower the amount, isn't it true, sir, that he is referring to
24 Leslyn Camacho's bribe amount, she has to lower the amount?

25 A The answer is no.

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1 Q Did n' t happen, not what was said?

2 A That's correct, that's not what was said.

3 Q You heard it --

4 A I was there I heard what the conversation was. You can't
5 hear it because it's inaudible.

6 Q Let's do this, let's go to July 30, 2008, R 26. I'll put
7 it on the screen. This is the next day, right, this meeting
8 that we just played was July 29, right, so this is the next
9 day. Page 11 line 18 you say, and he said -- that's Khan,
10 right?

11 A Right.

12 Q He said try to get the numbers down, whatever you save on
13 the 10,000 he'll make up to you. Vaughn: So I have to get the
14 numbers down? You say, the numbers she wants. He says, from
15 the 10,000? And you respond, you get her number down, well,
16 he said, we'll make it up to you rather than her. He'd rather
17 give you the?

18 A That's how Roger asked in part for me to play this guy
19 because he thought he was playing us.

20 Q This conversation on July 30 was a direct reference to
21 the portion of what we just heard you talking to Roger about,
22 isn't that right?

23 A Well, you didn't hear the conversation with Roger on the
24 29 --

25 Q Yes or no, please. Yes or no?

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1 A In part.

2 Q In part. So in part this portion we're talking about,
3 she has to lower the amount. He's telling you, if you want
4 this to happen fine, but she needs to lower the amount.

5 You then go back the very next day and just happen
6 to be saying the exact same thing that Roger Khan told you but
7 to Vaughn, isn't that right?

8 A You'd have to know the whole conversations on the 29 to
9 put it in the right context. But, yes, there is similarity
10 between those two portions of the transcripts.

11 Q And there is similarity because it's the same
12 conversation?

13 A No.

14 Q Relating a conversation from July 29 at the MCC with
15 Roger Khan discussing this bribe, you were relating that very
16 same conversation to Selwyn Vaugh the very next day, isn't
17 that right?

18 A I was telling Roger Khan what our strategy was to get
19 evidence of it. That's why on September 5 he wanted to make
20 sure I was going to tape record the conversation so that we
21 could get evidence that she was soliciting a bribe on behalf
22 of David Clarke to us.

23 Why would we tape record the meeting otherwise?

24 Q You would tape record the meeting --

25 THE COURT: Excuse me. Will you step out. Don't

Simel s - cross/D' Al essandro

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1 di scuss the case.

2 (Jury l eaves.)

3 THE COURT: Si t down, pl ease.

4 Do you understand my i nstruction?

5 THE WITNESS: I think I do, your Honor.

6 THE COURT: You're not abiding by it. Your career
7 is at stake, your liberty is at stake. It's an important case
8 to both sides. Emotions are getting a little high.

9 I don't want to jeopardize your interest in front of
10 the jury, but I'm not going to put up anymore with this. You
11 just started to talk about that's what happened on September
12 5. You can't do it.

13 THE WITNESS: All right, your Honor.

14 THE COURT: I i nstructed you not to do it, you're
15 not abiding by my i nstruction. I'm going to start stepping on
16 you in front of the jury. It's not going to help your case.

17 THE WITNESS: I know.

18 THE COURT: Understood?

19 THE WITNESS: Understood.

20 THE COURT: Bring the jury back in, pl ease.

21 Do you think you'll go past the l unch hour?

22 MR. D' ALESSANDRO: Yes, Judge.

23 THE COURT: Do you have a wi tness?

24 MR. SOLANO: I do.

25 THE COURT: Just one?

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1 MR. SOLANO: Yes.

2 THE COURT: That Kern fellow?

3 MR. SOLANO: Yes.

4 THE COURT: Any other evidence I'm going to hear
5 today except for the end of Mr. Simel s' testimony and Kern?

6 MR. SOLANO: No, your Honor. I have a stipulation,
7 one stipulation with two pieces of evidence.

8 THE COURT: You anticipate a rebuttal case?

9 MR. D' ALESSANDRO: Not at this time, your Honor.

10 (Jury present.)

11 THE COURT: I told you it was going to be a short
12 break. Be seated everyone.

13 Go ahead, Mr. D' Al essandro.

14 MR. D' ALESSANDRO: Thank you, your Honor.

15 BY MR. D' ALESSANDRO:

16 Q Mr. Simel s, by the way, you didn't anticipate that this
17 tape was going to be played at the beginnings of the trial; is
18 that correct?

19 MR. SHARGEL: I object to that, Judge.

20 THE COURT: Overruled.

21 A I thought of the possibility, yes.

22 Q Moving on to 1:01:40 of the recording.

23 (Tape plays.)

24 (Tape stops.)

25 Q This is the same conversation on July 29, 2008, between

Simel s - cross/D' Al essandro

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1 yourself and Roger Khan at the MCC; is that correct?

2 A Yes.

3 Q And you are explaining in this conversation about the
4 need for Roger Khan to get together some money, right?

5 A Yes.

6 Q And in a portion of this you tell him that you need money
7 to sling at anything that Fineman tells me is true; did you
8 hear that portion of the tape?

9 A No, not that way.

10 Q Did you hear the reference to Fineman?

11 A I did.

12 Q And that's Selwyn Vaughn, correct?

13 A Yes.

14 Q And the money that you needed to sling at Fineman for
15 anything that's true, that included whether or not Leslyn
16 Camacho is actually going to say what we hope she's going to
17 say for money; isn't that correct?

18 A 100 percent false.

19 Q This is money, the bribe money again; correct?

20 A We're not bribing them, they're soliciting a bribe from
21 us.

22 Q They're soliciting a bribe from you when on July 30 you
23 give Selwyn Vaughn directions to tell them, these people that
24 are going to perpetrate a crime, Look, tell them I'm an
25 attorney and it's perfectly legal; that's the crime that you

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1 are thinking they're perpetuating, correct?

2 A I think you're misquoting. They were drug dealers I was
3 talking to. Leslyn Camacho was a drug dealer. David Clarke
4 was a drug dealer. These weren't innocent babes coming to me.

5 Q So therefore it's okay for you to present inaccurate
6 evidence to my office with regards to them that could possibly
7 lead to their prosecution?

8 A Inaccurate?

9 MR. SHARGEL: I object as argumentative.

10 THE COURT: Sustained. We've covered that. You
11 covered that topic.

12 Q Now, there was some testimony yesterday with regards to
13 your beliefs as to Roger Khan. Do you recall at the beginning
14 of your testimony yesterday?

15 A Yes, I do.

16 Q And at one point you testified that you disbelieved that
17 Roger Khan was guilty of the crimes because he was involved in
18 the return of a person who had been kidnapped; correct?

19 A I think that's somewhat inaccurate.

20 Q Let me see if I can fine tune it then. You explained to
21 the jury that how could Roger Khan be a drug dealer if at the
22 same time he's helping the United States return somebody who
23 is kidnapped?

24 A What I said was that some of the transactions alleged in
25 Roger Khan's indictment occurred in the spring of 2003, April,

Simel s - cross/D' Al essandro

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1 May, June of 2003. At the same time I knew that he had been
2 meeting with Agent Carboneaux of the FBI and other agents of
3 the FBI, Agent Neelon of the State Department, working with
4 them on rooting out crime in Guyana and crime in terms of
5 transactions between the United States and Guyana, on both
6 weapons and drugs.

7 So part of our argument would have been to the jury,
8 unless this guy is very devious and meeting with the FBI and
9 State Department all day and then sending a shipment to the
10 United States, it might be a factor for the jury to listen to.
11 That's what I said.

12 Q Because it doesn't make sense that he's cooperating at
13 one hand and at the same time -- helping root out crime and at
14 the same time sending drugs, right?

15 A Somewhat inconsistent.

16 Q What is inconsistent?

17 A It's inconsistent to be -- trying to help the United
18 States capture people who are committing crimes, including
19 drug crimes, and at the same time sending drugs to the United
20 States. That was the point.

21 Q So it's unlikely, correct?

22 A I said it was a factor for the jury to consider, just
23 like I told the court about that.

24 Q So you also testified that Alicia Jagnarain was a
25 cooperator; correct?

Simel s - cross/D' Al essandro

1466

1 A Yes, she was a cooperator.

2 Q And so you began to investigate her, right?

3 A We did.

4 Q And you met a guy, I think it's a guy, Shoo Loo, is that
5 a guy --

6 A Shoo Loo is a man.

7 Q A man. And Shoo Loo told you that Alicia was selling
8 drugs, right?

9 A He was one who did, one of them.

10 Q Now --

11 A After, after her cooperation began.

12 Q She's cooperating, but your information is that she's
13 still committing crimes; correct?

14 A After her cooperation began, correct.

15 Q Right, so she's cooperating, she's presently cooperating,
16 but your information is that she's still committing crimes,
17 right?

18 A Yes.

19 Q And you believed that, right?

20 A They told me they could call her and get her on tape
21 confirming it, so I was willing to give them the opportunity
22 to try to do that.

23 Q So, when your client, who is charged with being a drug
24 dealer, and your information is that he's also cooperating at
25 the same time, is thrown out to pasture, but when Alicia, who

Simel s - cross/D' Al essandro

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1 is a potential witness is a cooperator, and your information
2 is that she's still committing crimes, got to track that down,
3 right?

4 MR. SHARGEL: Objection to the form of that
5 question.

6 THE COURT: Overruled.

7 A Two totally distinct matters. One, you have the FBI on
8 the ground and the State Department on the ground in Guyana --

9 Q A yes or no question. Yes or no question.

10 A Then the answer is no.

11 Q And you said that you were going to get her on tape,
12 right?

13 A They said they could get her on tape.

14 Q And I think you testified that you were going to give
15 them a recorder, right, Shoo Loo a recorder?

16 A And Gonzalez arranged to send him a recorder, yes or no?

17 Q And it was to record -- Shoo Loo couldn't come to the
18 United States, right?

19 A He was a drug dealer.

20 Q A drug dealer, and your concern was if he came here he
21 would be arrested, right?

22 A He was concerned. I wasn't concerned.

23 Q He said look, I'm a drug dealer, I can't come to the
24 United States I'm going to get arrested and you believe him,
25 right?

Simel s - cross/D' Al essandro

1468

1 A Most people don't admit to drug dealing unless they
2 probably are engaged in that business.

3 Q So you tell him go ahead and send drugs to Alicia because
4 that's going to help our case, right?

5 A No, I didn't say that at all.

6 Q You give a recording device for this guy Shoo Loo to do
7 what you said was going to be a controlled delivery, right?

8 A I was hoping that he would therefore get her on tape
9 saying I want you to send a kilogram of cocaine to New York
10 and I'll pay X amount of dollars. That would be pretty good
11 evidence to discredit and neutralize her.

12 Q I'll get to neutralize in a minute.

13 That's not a controlled delivery though, right?

14 A They weren't actually sending drugs to the United States.

15 Q You described it during your direct testimony by Mr.
16 Shargel to do a controlled delivery, yes or no?

17 A I think I used that term, that's correct.

18 Q And you have been practicing for how many years?

19 A Thirty-five years.

20 Q And in those 35 years you've defended people who have
21 been arrested for drugs; correct?

22 A Yes.

23 Q And part of the way that law enforcement arrests some
24 people is through these controlled deliveries; correct?

25 A That's correct.

Simel s - cross/D' Al essandro

1469

1 Q And your understanding of that term is when drugs
2 actually come in and under the control of law enforcement are
3 delivered to a person; correct?

4 A You're right.

5 Q So when you were explaining this to the jury yesterday,
6 you were explaining that you wanted Shoo Loo to actually send
7 drugs to Alicia, correct?

8 A It was really a misuse of a term. I wanted a tape
9 recording -- I think I made clear yesterday -- of Alicia
10 asking for drugs during a period of time she was cooperating.
11 I also went to see people -- sorry.

12 Q You mentioned that term neutralize, so why don't we just
13 address that. You described it yesterday as I think the word
14 was vernacular of lawyers; is that correct?

15 A We use it quite often, yes.

16 Q Okay. And just lawyers speak, right?

17 A No. We do as well.

18 Q Who is "we"?

19 A Lawyers.

20 Q Lawyers use it. You described it as part of the lawyers'
21 vernacular?

22 A You look at any magazine advertising CLE courses,
23 continuing legal education courses, they say neutralizing a
24 government's witness; neutralizing the expert; neutralizing
25 this, that's the name of the subject matter that is generally

Simel s - cross/D' Al essandro

1470

1 associ ated.

2 Q So the CLE courses, their term is neutralize the
3 government's witness and things like that?

4 A Neutralize an expert, neutralize a government witness,
5 neutralize the DNA, whatever it may be.

6 Q So you attended these CLE courses?

7 A Some.

8 Q For the jury, CLE is an acronym for continuing legal
9 education, right?

10 A Yes, we're required to do that every year.

11 Q The lawyers go and they keep up their knowledge of the
12 law under requirement by the bar, correct?

13 A That's correct.

14 Q And Selwyn Vaughn is not a lawyer, to your knowledge,
15 right?

16 A No.

17 Q He's not a practicing attorney, right?

18 A Correct.

19 Q He's not -- you weren't teaching any CLE courses during
20 your time with him, correct?

21 A No.

22 Q To your knowledge, he was working for Roger Khan; is that
23 right?

24 A In 2008?

25 Q Withdrawn. The truth is when you used the term with him,

Simel s - cross/D' Al essandro

1471

1 he's not a lawyer, you're not using lawyer speak with him;
2 correct?

3 A Sometimes I slip into lawyer's speak versus trying to
4 speak street as I was trying to do with him, you're right.

5 Q Sometimes you purposely speak street, right?

6 A You try to deal with your audience, if you can. At least
7 I do.

8 Q And just so everyone is clear, so I'm clear, when you say
9 speak street, we're talking about talking the language of
10 criminals?

11 A No, I think you can talk -- people can be criminals at
12 all different levels of society, but you may want to relate
13 differently to people depending on their educational
14 backgrounds, their cultural backgrounds.

15 This is a fellow from Guyana, a third world country.
16 There was a certain way of relating to him. They speak a
17 certain way down there that I had become accustomed to in
18 terms of my three meetings down there prior to meeting him and
19 in terms of my communication with him. Yes.

20 Q You weren't speaking patois to him or Guyanese dialect
21 slang, were you?

22 A They sometimes speak in a very perhaps unappealing
23 fashion for society in terms of the use of certain words. So
24 I spoke down -- I spoke down from, hopefully, the way I
25 normally speak to try to speak in a manner in which he would

Simel s - cross/D' Al essandro

1472

1 appreciate.

2 Q Are you talking about swear words?

3 A Some.

4 Q And what are some of the other types of words that are
5 used? Kill, is that a word that Guyanese use which is
6 unappealing?

7 A Kill, depending on the context, is a perfectly
8 appropriate word. Such as kill the witness on
9 cross-examination.

10 Q Neutralize the witness?

11 A Neutralize is an appropriate word as well.

12 MR. D' ALESSANDRO: Can we play R 10, one hour and
13 two minutes into the conversation.

14 I have the transcript, page 23, June 11, 2008.

15 Q You met with Selwyn Vaughn at that time, right?

16 A June 11, 2008?

17 Q Yes.

18 A Yes, I did meet with him that day.

19 Q One hour and two minutes.

20 (Tape plays-tape stops.)

21 Q This conversation, you're talking about David Clarke,
22 correct?

23 A At that point, yes.

24 Q And you're talking about neutralizing David Clarke,
25 correct?

Simel s - cross/D' Al essandro

1473

1 A At that point, yes.

2 Q And when you say the term neutralize Clarke, Selwyn
3 Vaughn says, neutralize Clarke, we gotta buy them or we gotta
4 drive fear in them, is the only options. You heard him say
5 that?

6 A I heard him say it since I listened to the tape.

7 THE COURT: Listen to the question and answer the
8 question.

9 A I don't recall, sir.

10 THE COURT: Excuse me. Stop volunteering additional
11 information.

12 THE WITNESS: Yes, your Honor. I don't recall, sir.

13 THE COURT: Follow my instruction. Do you
14 understand me?

15 THE WITNESS: Yes, your Honor.

16 Q You don't recall him saying that?

17 A I don't recall hearing that.

18 Q I can play it again. Does your recollection need
19 refreshing?

20 A My recollection doesn't need refreshing. I can hear it
21 on the tape now.

22 THE COURT: You can play it again.

23 (Tape plays-tape stops.)

24 Q Crystal clear; correct.

25 A You want me to explain? It's not crystal clear, no.

Simel s - cross/D'Al essandro

1474

1 Q You don't hear him saying that on the tape?

2 A Crystal clear to me what was happening at that moment.

3 Q I'm not asking you that. Do you hear Selwyn Vaughn in
4 this portion of the recording say, neutralize Clarke, we
5 either try to buy them or we gotta drive fear in them, is the
6 only option?

7 A I can hear him say that here.

8 Q You hear yourself say, I agree with you, I agree with
9 you; do you hear that?

10 A There's the rest of the sentence, but yes, that's true.

11 Q Crystal clear; correct --

12 A No.

13 Q -- in the recording. You can't hear it?

14 A I can hear the recording, Mr. D'Al essandro. That's not
15 what I'm saying.

16 Q The recording is crystal clear, correct?

17 A The recording is crystal clear.

18 Q There is no inaudibility in this portion of the
19 conversation, correct?

20 THE COURT: We get it.

21 Q When you're talking to Selwyn Vaughn about neutralizing
22 Clarke, and he says to you, we either try to buy them -- he's
23 talking about witnesses, family members of David Clarke;
24 correct?

25 A That would appear to be what he means.

Simel s - cross/D' Al essandro

1475

1 Q And then he says, or, if they won't take money, we gotta
2 drive fear in them, meaning we have to scare them; correct?

3 A That's one interpretation.

4 Q Is the only option, correct -- you hear that?

5 A I'm sorry, what's the question?

6 Q Do you hear him say, is the only option?

7 A I can hear that on the tape.

8 Q And you say, I agree with you, I agree with you, yes?

9 A Those were my words.

10 Q You are agreeing with Selwyn Vaughn that the only option
11 for Roger Khan is to neutralize Clarke through payment of
12 money to him or his family or by driving fear in himself or
13 his family; correct?

14 A No. I was focused on a different issue at that moment.

15 Q This guy is just spouting out about crimes of witnesses,
16 paying them off, hurting them or their family, and you're
17 focused on something else, that's your testimony?

18 A We were losing electricity at that moment. I had flipped
19 around, as you can see from the rest of the sentence, to look
20 at my computer and why it was all going down that day. And
21 then I was trying to reboot the system. He did mention those
22 kinds of things. I tried to dissuade him of them.

23 Q This is dissuading him by telling him, I agree with you,
24 I agree with you, that's dissuading Selwyn Vaughn from taking
25 steps in furtherance of what he's explaining to you, that's

Simel s - cross/D' Al essandro

1476

1 your testimony?

2 A I think I did later on, yes. That's why I sent the June
3 13 e-mail to him.

4 Q You testified yesterday that Selwyn Vaughn, after your
5 first meeting with him, you decided that he was not going to
6 testify; correct?

7 A He wasn't going to testify before my first meeting.

8 Q So you made the decision before even speaking to the guy
9 that he was not going to testify, is that your testimony?

10 A I didn't think it was a possibility at that point, no.

11 Q And there was nothing that happened following that, is
12 your testimony, your subsequent meetings, phone calls,
13 e-mails, that changed your mind, correct?

14 A One, he was going to be arrested if he walked into court
15 because he had a visa problem, according to him. Number two,
16 I already had my list of people before Judge Irizzary on the
17 Rule 15 and she had already ruled on them. So there was no
18 place for him, plus he didn't have any admissible evidence I
19 could use.

20 Q And you testified that you just told him that he was
21 going to be a witness because you understood him to be an
22 informant and you just wanted to flatter him, that was one of
23 the words you used?

24 A That was one of the words I was attempting to flatter
25 him, yes, and make him feel more important.

Simel s - cross/D' Al essandro

1477

1 Q The Rule 15 witness list that you were talking about,
2 that's for people who are out of the country, right?

3 A That would be for people out of the country, but since he
4 was an illegal alien, so to speak, he violated his visa, when
5 he walked into this building he'd be arrested because we'd
6 have to give you his date of birth and information about him.
7 He'd be locked up by INS and put in a jail to be sent back
8 home.

9 Q That's how you're going to flatter him, Come on, you're
10 illegally here, come on and testify?

11 A I wasn't attempting to flatter him by that information.
12 I'm telling you that that's a reason why I knew he couldn't be
13 a witness. I already had my Rule 15 list of who was going to
14 testify. The judge already said she didn't want cumulative
15 testimony. That's where I was at.

16 Q And the reason why you didn't want him to testify is
17 because, I think you said after the first meeting, you said
18 this guy is just not telling the truth, right?

19 A Based upon what my client told me, yes, that's what I
20 concluded.

21 Q And even though you thought that he was a liar, you still
22 felt that he could help out in some way, right?

23 A I did.

24 Q One way was even though he's liar, he could come back and
25 provide you with information, correct?

Simels - cross/D'Allessandro

1478

1 A Most confidential informants are liars. I thought we
2 could utilize his skills and his ability as a Guyanese to go
3 into the Guyanese community.

4 That's the reason I asked him to come back, plus he
5 wanted a letter from my client which perhaps would have led to
6 him being more truthful.

7 Q If you already decided before the guy even bothers to
8 step into the door that he's not going to testify, nothing
9 happens at the first meeting which changes your view on him,
10 you nevertheless ask him to write a letter so you can deliver
11 it to your client for Khan to say go ahead and talk to him;
12 that's your testimony?

13 A I didn't want Khan to speak directly to him, so I said to
14 him -- he wanted to communicate with Khan. I facilitated that
15 communication, yes.

16 Q You could have just said, like you did back in March of
17 08, you're not talking to him, right?

18 A March of 07.

19 Q March of 07, I stand corrected. You could have said
20 that, right?

21 A I could have.

22 Q You're not talking to him?

23 A As you pointed out, my client was facing a hundred years
24 plus in jail. I was trying to follow his request that I meet
25 with this person.

Simel s - cross/D' Al essandro

1479

1 Q Just to be clear, I didn't point it out, your client told
2 you that during the Title III --

3 THE COURT: That's enough.

4 MR. SHARGEL: Objection.

5 Q So even though this guy is in your view a liar, you're
6 going to send him out to bring back information to you even
7 though he's an informant and in your view informants are
8 liars, still valuable that he can bring back information,
9 correct?

10 A Of course.

11 Q Even those he's a liar?

12 A Of course.

13 Q Let me play R 3, page 29. I'm sorry, 1:06:25. This is
14 the May 13 meeting.

15 (Tape plays--tape stops.)

16 MR. D' ALESSANDRO: It's in evidence, your Honor, is
17 a transcript, we're on line 4. 1:06:25.

18 Q I want to direct your attention to line 6 of that
19 transcript. You say, assuming we go to trial in October,
20 which is then we're supposed to trial now, October 27 -- I
21 believe you testified earlier the trial was supposed to happen
22 sometimes in November, does that refresh your recollection as
23 to when the trial was supposed to start?

24 A No. October 27 was the date that Judge Irizzary set in
25 March but she had been advised by the jury clerk we couldn't

Simel s - cross/D' Al essandro

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1 start until November third.

2 Q You explain in this portion of the conversation that --
3 actually, you offer Selwyn Vaughn to testify, whether in the
4 United States or in Guyana; correct? You asked him --

5 A I said what it says here.

6 Q You asked him if he's willing to testify, either in the
7 United States or in Guyana; correct?

8 A Yes.

9 Q And so if he goes back to Guyana, it really wouldn't
10 matter if he was illegal or not, he's in Guyana, he can
11 testify there, right?

12 A He couldn't testify because he wasn't on the Rule 15
13 list.

14 Q This was the first time that Selwyn Vaughn as a witness
15 is really offered, right?

16 Selwyn Vaughn doesn't say, Hey, can I come testify?
17 You're the one that puts that out there; correct?

18 A I did put it out there.

19 Q Moving on, R 3, 1:19:07, page 38, starting at line 19.

20 (Tape plays-tape stops.)

21 Q In this portion of the conversation, you explain to
22 Selwyn Vaughn that if he does testify he's going to be subject
23 to cross-examination. Do you recall that portion of the
24 conversation?

25 A I do.

Simel s - cross/D' Al essandro

1481

1 Q And you then go on to explain to him that if he testifies
2 and he's cross-examining, you explain to him if they ask who
3 Ricardo is you can say you know Ricardo, correct?

4 A Yes.

5 Q You could say whether you know Fatman, you can certainly
6 say you know Ricardo, you can certainly say I know him by his
7 nickname Fatman; correct?

8 A Yes.

9 Q You then go on to explain to Vaughn all these other
10 people that you believe are referred to as Fatman; correct?

11 A No, I only mentioned one, Derek Walters.

12 Q Who calls himself Patrick Obermuller?

13 A Yes. He was a defendant in the Lilly case.

14 Q And then there's -- he's related to Whitney Caesar?

15 A He was related to Whitney Caesar, who was also a
16 defendant in the Lilly case.

17 Q You explain to him that, look, you get on the stand,
18 right, if they ask you questions on cross-examination you can
19 say, I know Fatman is Ricardo, correct, what you're telling
20 him?

21 A No. I'm sort of probing him here, but --

22 Q You're probing him for information?

23 A No I'm probing him because he had flipped three times in
24 the May 13 meeting between that's how we all go, meaning
25 Shortman, Fatman, Tallman, so forth, to him saying, no, the

Simel s - cross/D' Al essandro

1482

1 only Shortman in our group is Roger, to then saying again
2 that's how we go.

3 I was trying to get an understanding from him as to
4 what he -- his perception was as to how a response to the word
5 Fatman would be, is it just Ricardo, is it Derek Walters also,
6 is it other people?

7 Q And that's the question you're posing to him here?

8 A No, that's the topic I'm discussing with him here.

9 Q You tell him that they're going to ask you who Ricardo
10 is, whether you know Fatman, and you tell him, you can
11 certainly say I know him by the nickname Fatman, but I also
12 know many other people by the name Fatman, which is true,
13 right? And then you continue on.

14 You're telling him, are you not, that, look, you
15 take the stand, you can say you know these people, but you
16 gotta say there's plenty of other people that are named
17 Fatman, and then you give him the information he needs to
18 withstand cross-examination; isn't that what you're doing
19 here?

20 A He could never have been a witness in our case and
21 therefore this is all talk with him --

22 THE COURT: Does that mean the answer is no?

23 THE WITNESS: The answer is no, your Honor.

24 THE COURT: Could you answer the question, please.

25 THE WITNESS: Sorry, your Honor.

Simel s - cross/D' Al essandro

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1 A The answer is no.

2 Q Your testimony is that that is okay because in my mind
3 I'm never really going to call this guy as a witness, right?

4 A In my mind I was never going to call him as a witness,
5 that's correct.

6 Q So it's okay to coach him to say certain things because
7 he's never really going to testify, is that your testimony?

8 A You can't suborn -- yes, that's my testimony. You can't
9 suborn somebody by talking to him in the office and not using
10 him as a witness. You only can make them perjure themselves
11 if you're going to call them as a witness in a case. I'm just
12 talking with this guy for an hour and blank in my office.

13 Q You're talking for an hour and blank in your office to
14 make sure that when he takes the stand on the behalf of his
15 boss, Roger Khan, what comes out of his mouth is scripted by
16 you to make sure it is helpful to the defense, true?

17 A Absolutely false.

18 Q So you can coach the witness as much as you want, you can
19 coach the person as much as you want and then, but I was never
20 really going to call him as a witness, it's okay; is that your
21 testimony?

22 A He wasn't a witness and he wasn't going to be a witness
23 and it was five and a half months until the Khan trial. I
24 hadn't decided who if anyone would be a witness.

25 Q Five and a half months away from trial and you decided, I

Simel s - cross/D' Al essandro

1484

1 don't even know if I'm going to call anybody, that's your
2 testimony?

3 A That's possible.

4 Q And again, the reason why you're telling him, oh, you
5 could testify, this is flattery, correct?

6 A I wanted to keep him around through the summer because of
7 the various number of issues that come up. Finding people --

8 THE COURT: The question was, was it to flatter him?

9 THE WITNESS: Yes. And because my client wanted me
10 to explore the possibility, yes.

11 Q Explore the possibility of him testifying?

12 A My client thought he should be a witness.

13 Q And that's why on the July 11 meeting, before you even
14 asked him another question, you give him a document written by
15 your client as to what exactly Fineman will testify to;
16 correct?

17 A What Fineman would testify to?

18 Q Yes.

19 A I thought -- I thought we had shown him a document by
20 e-mail saying, tell me -- the beginning of the meeting, yes, I
21 showed him a document at the beginning of the meeting. Sorry.

22 Q And that document was written by your client; correct?

23 A Yes.

24 Q And that document in part had a portion attributed to
25 Fineman; correct?

Simel s - cross/D' Al essandro

1485

1 A Correct.

2 Q And that Fineman was Selwyn Vaughn, correct?

3 A Yes.

4 Q And that portion of that document written by your client
5 was directed to Fineman to tell him what he will testify to,
6 correct?

7 A No.

8 Q On the screen is 3500 SV 31.

9 THE COURT: Is this in evidence?

10 MR. D'ALESSANDRO: Yes, it is, your Honor.

11 Q This is the portion we have been talking about, right,
12 the portion of the document you handed to your client --
13 handed to Selwyn Vaughn on June 11, 2008, at the beginning of
14 the meeting, correct? Yes?

15 A Actually, I didn't hand him this particular document on
16 that date. But something else.

17 Q This --

18 A Similar to this, but something else.

19 Q You were here when Selwyn Vaughn identified this as the
20 document, correct?

21 A I heard him say that.

22 Q In this document, attributed to Fineman it says in part,
23 the second sentence, Fineman will testify of his relationship
24 with Khan and the reason he was recruited. See that?

25 A I see the words.

Simel s - cross/D' Al essandro

1486

1 Q He will testify of the many meetings he attended in
2 Buxton and in Agricola for David Clarke, Rondell and other TPM
3 operatives to discuss methods and plans to kill Khan and his
4 supporters. See that?

5 A I see that, the words.

6 Q He will testify that, he will testify that, he will
7 testify that, Fineman will testify that. And Fineman was a
8 high-ranking member of the PMT and will testify to many
9 meetings he attended where strategies were discussed to
10 eliminate Khan. See that?

11 A Yes, sir.

12 Q This is a script for Fineman to testify to, written by
13 your client that you handed him on June 11, 2008, correct?

14 A You're 100 percent incorrect. This was a memo Roger Khan
15 wrote to Mr. White and myself on January 18, 2008, five months
16 before I ever met this guy, in which he's proposing to us, if
17 you look at the rest of the document, the people he thinks we
18 should --

19 THE COURT: Answer the question.

20 THE WITNESS: I thought I was, your Honor.

21 THE COURT: No, you weren't.

22 THE WITNESS: It's not a script for this person.
23 That's the distinct answer to the question.

24 Q At this time, June 11th, 2008, Selwyn Vaughn met with
25 you, you explained to him the perils that his boss Roger Khan

Simels - cross/D' Alessandro

1487

1 faced, right? Selwyn Vaughn described Roger Khan as the boss,
2 right, you remember that, in the May 13 meeting?

3 A I heard him use that term.

4 Q And you explained to him that his boss was on trial, was
5 going to be on trial; there's all these witnesses lining up
6 against him, you explained all that to him, right?

7 A I think I told him it was a weak case that the government
8 had on the May 13 meeting, and that I thought we had plenty to
9 cross-examine Alicia Jagnarain and Lilly and that I didn't
10 think much of their case and that's why the government the
11 changed their theory of the prosecution.

12 Q Is that a yes?

13 THE COURT: Move on. Ask another question.

14 Q Explaining all these things to Selwyn Vaughn, explaining
15 to him, telling him that you wanted him to testify, you hand
16 him on July 11 this document from your client in order to make
17 sure he understands what he's going to testify on Roger Khan's
18 behalf, correct?

19 A No, not at all.

20 MR. D'ALESSANDRO: R 13, can we have that up, 55:43,
21 page 29, line 27 is where the transcript starts.

22 Q Just to orient you, Mr. Simels, this is the June 20/2008
23 meeting. Do you recall meeting Selwyn Vaughn?

24 A I did.

25 Q 55:43.

Simel s - cross/D' Al essandro

1488

1 (Tape plays-tape stops.

2 Q You end that portion of the recording we just heard by
3 saying, once again, Selwyn Vaughn, the key is going to be your
4 testimony, did you hear that part?

5 A I did.

6 Q And the key for Selwyn Vaughn to be relevant to your
7 testimony is to get him to say what Roger Khan needs to be
8 said, correct?

9 A False.

10 Q Right, false testimony?

11 A No, false to your question.

12 Q You begin this portion by explaining to him, But I mean,
13 listen, the key from your perspective -- and when you say your
14 perspective, you're talking about Selwyn Vaughn; correct?

15 A What I'd like him to do.

16 Q Fair enough.

17 What you want Selwyn Vaughn to do is to find these
18 people who we are looking for, great. If we can persuade them
19 somehow that they shouldn't testify, that's great. Talking
20 about witnesses, right?

21 A Yes.

22 Q These are people --

23 A Yes.

24 Q These are people who in your mind are going to testify,
25 right?

Simel s - cross/D' Al essandro

1489

1 A Yes.

2 Q If Selwyn Vaughn can persuade these people somehow that
3 they shouldn't testify, that's great?

4 A I don't think I say if he persuades them. I said if we
5 can persuade them. I meant me.

6 Q You said "we"?

7 A I understand. "We" meaning he gets them to me, I get to
8 speak to them.

9 Q "We" means more than one person, right?

10 A "We" means he gets them, I speak to them.

11 Q That is not my question. "We" means more than one
12 person, correct?

13 A Yes.

14 Q "We" means that there is one or more persons that have an
15 agreement to do something, correct?

16 We, we do something, that's an agreement, right?

17 A I don't understand your question. If we to something,
18 I'm saying to him, if we can persuade them.

19 Q There's an agreement between him and you and Khan and
20 anybody else, if we can persuade these witnesses not to
21 testify somehow, that's great; correct?

22 A Those are the words there.

23 Q We, not just you, we --

24 MR. SHARGEL: I object to the repetition, Judge.

25 THE COURT: Yes. Sustained.

Simel s - cross/D' Al essandro

1490

1 Q If we can persuade them that David should meet with me --
2 make a distinction there, right -- "we" at the beginning, "me"
3 at the end, right?

4 MR. SHARGEL: Same objection. .

5 THE COURT: Sustained. We get it.

6 Q Let me finish this thought.

7 If we can persuade them that David should meet with
8 me to talk to me, that couldn't hurt. Talking about getting
9 David Clarke to talk to you; correct?

10 A Yes.

11 Q Through Selwyn Vaughn; correct?

12 A Yes.

13 Q To neutralize David Clarke; correct?

14 A To speak to David Clarke.

15 Q The ultimate goal to neutralize him, right?

16 A The ultimate idea is to have him after our meeting go
17 back to the prosecutors in your office and tell them the
18 truth, or ultimately for me to be able to use him to make sure
19 I had him on cross-examination.

20 Q And the truth as you want to present to the jury;
21 correct?

22 A No, I wanted him -- I wanted to tell David Clarke what I
23 knew, tell him how I was going to support the fact that he had
24 participated in murders in Guyana.

25 I was persuaded in my mind he probably had not told

Simel s - cross/D' Al essandro

1491

1 the government about that and I was hoping he would go back
2 and tell them that before I exposed him on the witness stand.
3 That was any thought process.

4 Q If we could persuade Alicia that she ought to talk to me,
5 if she has in the back of her mind that her, her involvement
6 is not a good thing, great. Her involvement meaning a
7 cooperator, right?

8 A That's right.

9 Q Her being a witness on behalf of the government, that's
10 her involvement in this case, right?

11 A That would be correct.

12 Q And if we can persuade her that she ought to talk to me
13 and has in the back of her mind that her being a government
14 cooperating witness against Roger Khan is not a good thing, if
15 we can accomplish that, you say, great. Correct?

16 A Yes, those are my words.

17 Q Chinaman, whatever the situation is with him --
18 open-ended, right? Not a lot of direction about Chinaman in
19 that attribution?

20 A You're asking me what my words meant?

21 Q I'm asking you if in these words that you used is there
22 any direction that you're giving Selwyn Vaughn?

23 A I had already spoken to him about Chinaman, I believe, at
24 that point and I wanted to speak to him and find out --

25 THE COURT: That's not the question. In those words

Simel s - cross/D' Al essandro

1492

1 is there any direction to Vaughn?

2 THE WITNESS: In these words, no, your Honor.

3 THE COURT: That's the question. Listen to the
4 question and answer the question posed.

5 THE WITNESS: Sorry, your Honor.

6 Q You believe at some portion other than this you gave
7 Selwyn Vaughn some direction on how to deal with Chinaman;
8 correct?

9 A On more than one occasion.

10 Q Let's go to R 14. It's 1:40. This is a telephone call
11 from July 2, 2008 between you and Selwyn Vaughn, just you to
12 orient yourself. We're going to begin at line 38, 1:40 in the
13 conversation.

14 (Tape plays-tape stops.)

15 Q Now, following this e-mail -- excuse me, this phone
16 conversation, you recall an e-mail being sent about the
17 whereabouts of David Clarke to Selwyn Vaughn?

18 A Yes.

19 Q And that was sent by Arienee Irving?

20 A Yes.

21 Q And that was for Selwyn Vaughn to go see David Clarke;
22 correct?

23 A That was telling him what she'd learned on the phone that
24 there were -- she got two different answers as to what the
25 procedure was.

Simel s - cross/D' Al essandro

1493

1 Q You're giving him the procedures of how to get in to see
2 an inmate, not because you guys are having just a pleasant
3 conversation, it's for a purpose, right?

4 You gave him that information so that he could go
5 see David Clarke, correct?

6 A He said he would try to do it and we wanted him to see if
7 he could do it, yes.

8 Q And you explain to him what Roger's view is, Roger is
9 behind the scenes in all this, too, he's saying yeah, go send
10 Selwyn to go see him, right?

11 A That's what I said to him, yes.

12 Q Roger is telling you make sure Selwyn does this, right?

13 A No.

14 Q He's not?

15 A Roger doesn't dictate to me what to do or not to do, no.

16 Q Nobody dictates to you what to do and what not to do?

17 MR. SHARGEL: Objection.

18 THE COURT: Don't do that.

19 MR. D'ALESSANDRO: Withdrawn.

20 Q Whether Roger instructed you to do it, Roger's behind you
21 in this decision, right?

22 A I'm telling him that, yes.

23 Q And David Clarke is a central witness in the case against
24 Roger Khan; correct?

25 A Possibly. We thought so.

Simel s - cross/D' Al essandro

1494

1 Q And you're sending Selwyn Vaughn to go make contact with
2 him, David Clarke; correct?

3 A If he could.

4 Q That's yes?

5 A I didn't think he could because he was a person who told
6 me he had a problem with his visa and had overstayed. I
7 assumed if they did the background check that every Bureau of
8 Prisons does, he wouldn't get in and might be arrested.

9 Q This is the Queens Private Correctional Facility, right?

10 A Governed by the Bureau of Prisons.

11 Q The same one that you were able to get in without any
12 trouble to see David Clarke; correct?

13 A I had no trouble because I presented my credentials as an
14 attorney and --

15 THE COURT: Stop. You can't keep volunteering
16 additional information.

17 THE WITNESS: No, I had no problems getting in.

18 THE COURT: Abide by my instructions?

19 THE WITNESS: Yes, your Honor.

20 THE COURT: Answer the question as posed.

21 THE WITNESS: Yes, your Honor.

22 Q You didn't represent and --it's stipulated that you don't
23 represent David Clarke, not now, not never?

24 A I've never represented David Clarke, no.

25 Q Let's just be clear here. You sent Selwyn Vaughn to go

Simel s - cross/D' Al essandro

1495

1 see David Clarke in prison, right?

2 A I gave Selwyn Vaughn the information to go try to see if
3 he could see him, yes.

4 THE COURT: Let's break for lunch. Don't discuss
5 the case. We'll resume at two o'clock.

6 All rise.

7 (Jury leaves.)

8 THE COURT: Two o'clock.

9 (Luncheon recess.)

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Simels - cross - D'Allessandro

1496

1 A F T E R N O O N S E S S I O N

2 (In open court; jury not present.)

3 THE COURT: Okay. Ready?

4 MR. SHARGEL: Ready.

5 THE COURT: Would you bring in the jury, please.

6 You can be seated in the back, if you like. Just
7 please rise when the jury comes in.

8 (Jury present.)

9 THE COURT: Please be seated, everyone.

10 Mr. D'Allessandro.

11 MR. D'ALESSANDRO: Thank you, your Honor.

12 ROBERT SIMELS, resumed.

13 CROSS-EXAMINATION (Continued)

14 BY MR. D'ALESSANDRO:

15 Q Mr. Simels, before the break for lunch, we were talking
16 about a portion of the July 2, 2008 phone conversation you had
17 with Mr. Selwyn Vaughn. Do you recall those questions?

18 A I do, sir.

19 Q And we were talking about the portion of the conversation
20 in which Selwyn Vaughn is going to go see David Clark?

21 A Yes, sir.

22 Q Now, in this conversation, you explain to Selwyn, do you
23 not: "Depending on what we find out, Roger's view, if you can
24 go to see him" -- and that's David Clark, "him"; correct?

25 A Yes.

Simels - cross - D'Allessandro

1497

1 Q -- "even if you just talk about bullshitt, nothing
2 related to the case, if when you testify you can demonstrate
3 that he has been meeting with you, right, it would give you
4 more credibility on the witness stand that he's, you know, uh,
5 been seen."

6 You saw that portion of the transcript and heard
7 that recording.

8 A Yes.

9 Q You're explaining to Selwyn Vaughn to go see David Clark
10 in preparation for Selwyn Vaughn to testify at Khan's trial,
11 are you not?

12 A I am.

13 Q You are explaining to him: "If you go see David Clark,
14 and even if he doesn't want to meet with you or he doesn't
15 want to talk with you about substantive matters -- the Mets,
16 the Yankees or whatever it is, bullshitt -- that it would give
17 him credibility on the witness stand."

18 Those were your words; correct.

19 A Yes, sir.

20 Q And that would corroborate him on the witness stand
21 before a jury were he to say, I know David Clark, we're
22 friends, he hates America, he told me all these horrible
23 things about Roger Khan. That would corroborate him if you
24 can present to the jury evidence that he's been meeting with
25 him in the jail, wouldn't it?

Simels - cross - D'Allessandro

1498

1 A I don't think I could answer that yes or no, sir.

2 Q If you have a witness who is going to testify, and that
3 witness is going to testify about things, their interaction
4 with another person -- are you with me so far?

5 A I am, sir.

6 Q -- the person is going to say these things they know
7 about or heard about that individual, it would be important
8 and fair to say, to corroborate for the jury, the relationship
9 between the witness who is testifying and the person they are
10 talking about; fair to say?

11 A I agree with that.

12 Q So, therefore, if Selwyn Vaughn were to take the stand
13 and say these things -- David Clark hates America, all these
14 things you want to present to the jury at Khan's trial -- it
15 would corroborate Selwyn Vaughn's credibility if you were able
16 to present evidence that he's been meeting with David Clark in
17 jail; correct?

18 A I don't think I can answer that yes or no, either, sir.

19 Q Now, I want to talk about the money that was recovered
20 from your office. Okay?

21 A Yes, sir.

22 Q It was \$2500 cash?

23 A Yes, sir.

24 Q And it was in a locked drawer in your office; is that
25 right?

Simels - cross - D' Alessandro

1499

1 A Yes, sir.

2 Q And also recovered in evidence was a blue Post-It note;
3 right? It was recovered from your desk drawer with the money;
4 correct?

5 A A Post-It note, yes, sir.

6 Q And the Post-It note said "Khan money" on it.

7 MR. D' ALESSANDRO: It is in evidence, Government's
8 Exhibit 605.

9 THE COURT: Yes.

10 Q That's what we're talking about; right?

11 A Yes, sir.

12 Q And that was next to the bag that had the money; right?

13 A It was in the drawer, yes, sir.

14 Q It was next to the bag that had the money; correct?

15 A Yes, sir.

16 Q It was not just next to it, it was right next to it;
17 right?

18 A Yes, sir.

19 Q And what it was on was a green box; correct?

20 A That's correct, sir.

21 Q And what was in that box?

22 A A watch and jewelry, including a cross, a gold cross that
23 had been returned to me by, I think, either Agent Fitzpatrick,
24 Fitzsimmons, something of that nature, from the DEA sometime
25 before then.

Simels - cross - D' Alessandro

1500

1 Q And whose watch and jewelry was that?

2 A Belonged to a client by the name of the Kenneth McGri ff.

3 Q That's Supreme?

4 A That's one of his nicknames, yes, sir.

5 Q You were holding onto it?

6 A He was in jail, and I was holding onto it, yes, sir.

7 Q There was not any Khan money in there?

8 A No, sir.

9 Q The Post-It note was on a box that had the watch and
10 jewelry for Kenneth McGri ff, but had a Post-It note on it that
11 said Khan money; right?

12 A Yes, sir.

13 Q And right next to it was a white plastic bag that had
14 \$25,000, in evidence?

15 THE COURT: You said 25,000.

16 MR. D' ALESSANDRO: Excuse me, your Honor.

17 Q 2500. I apologize?

18 \$2500; correct.

19 A Yes, sir.

20 Q This is money you got from Khan, this is Khan's money; is
21 that correct?

22 A Absolutely not, sir.

23 Q This is the money that you had in your desk ready to give
24 to Leslyn Camacho for her testimony; isn't that right?

25 A Absolutely not, sir.

Simels - cross - D'Allessandro

1501

1 Q This is \$2500, presuming you are able to lower the amount
2 because Khan wanted you to negotiate with her, and you
3 explained to Selwyn Vaughn this is the first installment for
4 testimony; correct?

5 A Absolutely not.

6 Q Now, in preparation for Khan's trial, you spent a lot of
7 time with him; fair to say?

8 A Yes, sir.

9 Q You spent a lot of time with people that knew him; right?

10 A Yes, sir.

11 Q People like Paul Rodriguez?

12 A Yes.

13 Q Gerald Pereria?

14 A Yes, sir.

15 Q Barry Dataram?

16 A Some.

17 Q Lloyd Roberts?

18 A Never.

19 Q Fredroy Williams?

20 A I never met him, sir.

21 Q You knew his nickname?

22 A I did.

23 Q His nickname was Fudgey?

24 A Yes.

25 Q You spoke to them?

Simel s - cross - D' Alessandro

1502

1 A I did. Well, Fudge I spoke to.

2 Q Sean Bel l fi el d?

3 A Yes, si r, I met hi m.

4 MR. D' ALESSANDRO: One moment, your Honor.

5 (Pause.)

6 Q Government' s Exhi bi t 3, Roger Khan; correct?

7 A Yes, si r.

8 Q Your cli ent?

9 A Yes, si r.

10 Q Government' s Exhi bi t 1, Ri cardo Rodri gues; correct?

11 A Yes.

12 Q Fatman?

13 A Yes, si r.

14 Q Government' s Exhi bi t 28, Barry Dataram; correct?

15 A Yes, si r.

16 Q Al so cal led Kevi n?

17 A Yes, si r.

18 Q Al so Mogatoni ?

19 A Yes.

20 Q Letch?

21 A No, si r.

22 Q What do you know hi m as?

23 A Well, I know hi m as Kevi n and Mogatoni , and I know hi m as
24 Barry Dataram.

25 Q When you met hi m, you met hi m in Guyana; right?

Simel s - cross - D'Al essandro

1503

1 A Yes, sir.

2 Q And the circumstances under which you met him, he had
3 been arrested; right?

4 A I think that may be accurate, yes.

5 Q When you met him, he was released from jail, was out on
6 bond, and he didn't go back; correct?

7 A I don't know that for sure, sir. But --

8 Q That was your understanding?

9 A I knew he had a case.

10 Q So, as you sit here today, you don't know whether or not
11 he was arrested, had bond posted and didn't go back to court?

12 A That could be the circumstance. I don't recall that.

13 Q He was arrested for drugs; right?

14 A I don't think so, sir.

15 Q Government's Exhibit 6, Paul Rodriguez?

16 A Doesn't look like Paul, but it's close.

17 Q Also known as Pablo?

18 A Paul Rodriguez is know as Pablo.

19 Q He's related to Ricardo Rodrigues?

20 A I don't know that, sir.

21 Q Exhibit 13, Gerald Pereria?

22 A Yes, sir.

23 Q So, Paul and Gerald were two of the guys that drove you
24 around?

25 A They were two, Yes, sir.

Simels - cross - D'Allessandro

1504

1 Q Fredroy Willibas, never met him?

2 A Never met him.

3 Q Lloyd Roberts, never met him?

4 A Never met him.

5 Q Sean Bellfield, Government's Exhibit 21?

6 A I met him.

7 Q Also known as Backup?

8 A Yes, sir.

9 Q Government's Exhibit 18, this is Ray Lammay, isn't it?

10 A Yes, sir.

11 Q Met him?

12 A I did meet him.

13 Q Involved in drugs in Guyana, isn't he?

14 A I believe he was.

15 Q Government's Exhibit 33, Clay Hudson, you met him?

16 A I did, sir.

17 Q Also involved in drugs?

18 A I believe so, sir.

19 Q Ricardo, Gerald Pereria, Lloyd Roberts, Sean Bellfield,
20 these are all guys that were working for Roger Khan; correct?

21 A I'm sorry? Would you repeat that?

22 Q Sure. Paul Rodriguez, Gerald Pereria, Fred Willibas,
23 Lloyd Roberts and Sean Bellfield, these guys were working for
24 Roger Khan?

25 A When I met them?

Simels - cross - D'Allessandro

1505

1 Q Excuse me?

2 A When I met them, is that what you are asking?

3 Q When you met them, were three working for Roger Khan?

4 A I believe that Mr. Rodriguez was working for him, yes,
5 sir.

6 Q What about Gerald Pereria?

7 A I don't believe so, sir.

8 Q He was driving you around to help you with Roger Khan's
9 case, and you don't believe he was working for Roger anymore?

10 A That's correct.

11 Q You believe he was working for Ricardo Rodrigues; right?

12 A For a company that Rodrigues was running, yes, sir.

13 Q Ricardo Rodrigues is involved in drugs, isn't he?

14 A I believe so.

15 Q So, Gerald Pereria was working for Ricardo Rodrigues?

16 A In a lawful company in Guyana, as far as I knew.

17 Q Previously, he was working for Roger Khan; correct?

18 A I don't know that, sir.

19 Q Well, you spent all this time with Roger Khan. You
20 talked to people that were associated with him. This guy
21 Gerald is driving you around. You are saying you have no idea
22 whether or not he was working for Roger Khan previously?

23 A I only knew him as an ex-police officer who was helping
24 us to locate people and to drive me around and make sure I was
25 safe.

Simels - cross - D' Alessandro

1506

1 Q What about Fredroy Willibas, do you know whether he was
2 working for Khan at any point?

3 A I don't know, sir.

4 Q Lloyd Roberts?

5 A I don't know, sir.

6 Q Sean Bellfield?

7 A Well, all three of those people were police officers in
8 Guyana, sir.

9 Q Which three?

10 A Bellfield, who was a well-recognized police officer.

11 I think Lloyd Roberts was.

12 I think Fudgey was.

13 And Paul Rodrigues.

14 Q And they were previously arrested; that's why they were
15 ex-police officers; correct?

16 A Would you like to go one by one? I can tell you what I
17 know.

18 Q Let's start out generally. Do you know whether Paul
19 Rodriguez was previously arrested?

20 A Not by the Guyanese, no, sir.

21 Q You're talking about people in Surinam?

22 A He was arrested in Surinam in June of 2006, and the
23 charges dismissed in around November 2006, but he was
24 terminated for being AWOL from June to November 2006. That's
25 my understanding.

Simels - cross - D' Alessandro

1507

1 Q Sean Bellfield was also arrested?

2 A And the same circumstance.

3 Q Roger Khan was arrested with him, too?

4 A Yes, sir, and the charges were dismissed, as well.

5 Q They were arrested with wiretapping equipment; correct?

6 A No, sir.

7 Q They were arrested with guns; right?

8 A No, sir.

9 Q They were arrested with drugs; correct?

10 A No, sir.

11 Q You knew that these people -- Rodriguez, Pereria,
12 Roberts, Bellfield -- they were involved in violent acts,
13 didn't you?

14 A I knew they were very highly-decorated police officers in
15 the Guyanese police force.

16 THE COURT: Listen to the question.

17 THE WITNESS: I'm sorry. I thought I was.

18 THE COURT: No. The question didn't have anything
19 to do with that.

20 THE WITNESS: I'm sorry, sir.

21 THE COURT: Pose the question again.

22 Listen to the question and answer the question.

23 THE WITNESS: Yes, sir.

24 Q Paul Rodriguez, Gerald Pereria, Sean Bellfield, Lloyd
25 Roberts, you knew they were involved in violent acts? Yes or

Simels - cross - D' Alessandro

1508

1 no?

2 A No, sir.

3 Q You had no idea that they had anything to do with people
4 being shot or people being killed?

5 A No, sir.

6 Q No reason to suspect it?

7 A No, sir.

8 MR. D' ALESSANDRO: Can we play -- I apologize, your
9 Honor. Can we play R-3, one hour, two minutes and twenty
10 seconds, May 13, 2008 meeting, Mr. Simels, to orient you. I'm
11 going to start at the bottom of page 26. I'll put it on the
12 Elmo for everybody.

13 (Tape plays.)

14 (Tape stops.)

15 Q Starting at the beginning of page 26, Pereria is Gerald
16 Pereria?

17 A Yes, sir.

18 Q Pablo on Paul Rodriguez, that's Paul Rodriguez; right?

19 A Yes.

20 Q Sean is Sean Belfield; correct?

21 A Yes, sir.

22 Q Roberts is Lloyd Roberts; correct?

23 A Yes, sir.

24 Q You asked Selwyn Vaughn in this conversation, when you
25 were with them; that means when you were with Paul Rodriguez,

Simels - cross - D'Allessandro

1509

1 Gerald Pereria, Lloyd Roberts and Sean Bellfield; right?

2 A Yes, sir.

3 Q When you were with them, did you ever see them actually
4 kill someone, or was it always the police who actually did the
5 killing? Do you see that question?

6 A I do, sir.

7 Q You were asking him that question, because you understood
8 that these guys were around when people were being murdered;
9 correct?

10 A No, sir.

11 Q You just asked him if these four guys were there when
12 people -- you just asked Selwyn Vaughn, who has already told
13 you he knows these guys, if he was in a position to actually
14 see them kill people, even though you didn't have been
15 suspicion that they were near any murders or near any
16 killings?

17 A Yes, sir.

18 Q You had no reason to suspect that these people were
19 involved or near any murders, and yet you asked the question
20 any ways?

21 A I certainly did.

22 Q And Selwyn Vaughn returns by telling you: "No one
23 actually knew, you know."

24 And you say: "Who did it?" Meaning who was
25 actually responsible for killing these people; correct.

Simels - cross - D' Alessandro

1510

1 A Yes, sir.

2 Q And he says: "Because with everybody firing, you know,"
3 meaning Paul Rodriguez, Gerald Pereria, Lloyd Roberts and Sean
4 Bellfield; right?

5 A That's what he says, sir, yes.

6 Q Because with these guys, all of them firing, you know it
7 was hard to determine who might have fired the fatal shot;
8 correct?

9 A That's what he said, sir, yes.

10 Q He was explaining to you that when these guys fire a
11 volley of bullets at somebody, it's kind of hard to say which
12 of the four was the one whose bullet hit the mark and killed
13 them?

14 A That's what he was saying, sir.

15 Q And despite this, you had no idea, no suspicion, that
16 these guys were involved in any type of killing?

17 MR. SHARGEL: I object. This is the third time he
18 put the same question to him.

19 THE COURT: He said "despite this." I will allow it
20 this one more time.

21 Go ahead. You can answer the question.

22 A I didn't know, sir, one way or the other.

23 Q And yet you wanted to find out more information from him
24 about this; is that correct?

25 A I definitely wanted to find out more information.

Simels - cross - D' Alessandro

1511

1 Q So, you fashioned a message to be sent from Selwyn Vaughn
2 to Roger Khan; correct?

3 A Yes, sir.

4 Q And you asked -- and you said: "Just give it to us,"
5 meaning yourself and Arienne -- "and we can get it into the
6 jail without anybody ever seeing it"; correct?

7 A Yes, sir.

8 Q And that's -- you're talking about smuggling in a message
9 from --

10 MR. SHARGEL: I object to the form of the question.

11 THE COURT: Overruled.

12 Q You're talking about smuggling in a message from Selwyn
13 Vaughn, who is telling you that he's an associate of Roger
14 Khan, smuggling in that message to Roger; correct?

15 A No, sir.

16 Q Well, you're explaining to him that Selwyn Vaughn, who is
17 not a lawyer; right, we've established that already; right?

18 A Yes, sir.

19 Q He's not on the legal team; right?

20 A Yes, sir.

21 Q You said a number of times that you weren't even going to
22 call this guy as a witness?

23 A That's correct, sir.

24 Q Yet he's telling you that he is an associate of Roger
25 Khan's; correct?

Simels - cross - D'Allessandro

1512

1 A Yes, sir.

2 Q He's telling you that Roger Khan is the boss; correct?

3 A Yes, sir.

4 Q And he's telling you about the fact that four guys who
5 are associated with Roger Khan were present when people were
6 killed; correct?

7 A Yes, sir.

8 Q And you wanted to get more information about it, so you
9 get Roger Khan -- you ask Selwyn Vaughn to give you a message,
10 so that you can bring it in to Roger Khan; correct?

11 A Absolutely.

12 Q You explain that the way you're going to do this is, if you
13 give it to us as his attorneys, we can just bring it into the
14 jail, because the jail never checks our stuff; correct?

15 A Yes, sir.

16 Q And it's not legal correspondence; correct?

17 A No, sir.

18 Q You are not supposed to be bringing in things that are
19 not legal correspondence to the jail; correct?

20 A I don't agree, sir.

21 Q You heard the testimony of Luis Rodriguez; correct?

22 A Yes.

23 Q And Luis Rodriguez works for the MCC; correct? Do you
24 remember that testimony?

25 A Yes, sir.

Simels - cross - D'Allessandro

1513

1 Q And he works for the Special Investigation Services for
2 the MCC; do you remember that testimony?

3 A I heard that, yes, sir.

4 Q And you testified that lawyers aren't supposed to bring
5 in things which are not legal mail; right?

6 A I think he said we could bring up to an inch of materials
7 in. I thought that's what I heard. I'm sorry, sir.

8 Q He said, did he not, that it was legal mail, up to an
9 inch of legal mail?

10 A I didn't hear that as you are phrasing it, sir, I'm
11 sorry.

12 Q If he did say it, it would have been the first time you
13 knew that you were not supposed to bring in things to a client
14 other than legal correspondence; is that what you are saying?

15 A Yes, sir.

16 Q So, if Selwyn Vaughn had written saying, Hey, let me know
17 who you want me to kill, you could bring that in; correct?

18 A I would not bring that in.

19 Q You could bring that in; correct?

20 A No, I would not bring in evidence of a crime. I would
21 not.

22 Q And then you have Roger Khan bring something out, rather,
23 he writes a message, and it comes right out for Selwyn Vaughn;
24 right?

25 A Yes, Roger Khan wrote a note. Yes, sir.

Simels - cross - D'Allessandro

1514

1 Q It was not for you; right?

2 A No, sir.

3 Q It was not for Arienne, Ms. Irving?

4 A No, sir.

5 Q It was not for a member of the defense team; right?

6 A No, sir.

7 Q It was for Selwyn Vaughn; right?

8 A Yes, sir.

9 Q Not legal mail; right?

10 A No, sir.

11 THE COURT: No, it's not right, or, no, it was not
12 legal mail?

13 THE WITNESS: It wasn't legal mail, your Honor. I'm
14 sorry.

15 Q And the message that Roger wrote was, among other things,
16 directing Selwyn Vaughn to tell his lawyers all; right?

17 A Yes, sir.

18 Q So, it was authorization from Selwyn Vaughn's boss to
19 say, tell my lawyers everything, I trust them; right?

20 A Authorization from Roger to have him tell me all, yes,
21 sir.

22 Q And did you ever revisit the issue again, about who was
23 responsible for the killing of these people?

24 A I don't recall specifically whether we addressed that
25 issue. But we certainly were talking about other matters of a

Simels - cross - D'Allessandro

1515

1 similar nature, if that's responsive.

2 Q Well, did you talk about this specific issue? Do you
3 recall?

4 A I don't recall, sir.

5 Q You sent a note through -- to Roger Khan at the MCC
6 specifically to get more information about this issue, and you
7 don't recall whether or not you ever followed up with
8 questions?

9 A No. The note was intended to have him tell me all. It
10 meant on every subject matter, sir, not simply that particular
11 question.

12 Q Fair enough. But you would have to ask the question for
13 him to give it to you; right?

14 A That's correct, sir.

15 Q So, if you didn't ask the question, he's not going to
16 give you the answer; is that fair?

17 A One would have hoped he would volunteer, yes, sir.

18 (Continued on next page.)

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1 CONTINUED CROSS-EXAMINATION

2 BY MR. D'ALESSANDRO:

3 Q You didn't ask him any questions about whether he was
4 involved in bombing attempts, right? Never asked him anything
5 like that?

6 A No, I never asked him anything like that.

7 Q You didn't ask him any questions about the torture of a
8 woman who was believed mistakenly to be involved in
9 kidnapping --

10 A I did not, sir.

11 Q David Clarke -- we went through this on direct. I want
12 to go through it again.

13 David Clarke was somebody that you viewed to be
14 everything to the government's case, right?

15 A No.

16 Q You did not believe him to be everything to the
17 government's case?

18 A I did not.

19 MR. D'ALESSANDRO: Might I have a moment, your
20 Honor?

21 THE COURT: Yes.

22 (Pause.)

23 MR. D'ALESSANDRO: Page 9, line 27 of --

24 THE COURT: What's the date?

25 MR. D'ALESSANDRO: May 13th, 2008, T3, line 27.

1 Q You say in this portion of it, talking about David
2 Clarke, how important is David Clarke to this case? You say
3 he's everything to this case now. Their whole case is based
4 upon it.

5 You said that?

6 A I did say is that.

7 Q David Clarke is somebody you viewed to be the centerpiece
8 of the government's case, right?

9 A I did say that.

10 Q You believed that the government's whole case would fall
11 apart if David Clarke didn't testify; is that right?

12 A Can I ask for clarification? You mean what I told him or
13 did I really believe that?

14 Q You told Selwyn Vaughn this?

15 A Yes.

16 Q You didn't believe this?

17 A I did not, sir.

18 Q This is the first thing you believed the government's
19 whole theory of the case changed because you believed that
20 this man was now a cooperating witness, correct?

21 A Yes, I believed that theory changed because of him; yes,
22 sir.

23 Q Because of one witness the entire theory of the
24 government's case has changed and you don't think that person
25 is everything to the government's case?

1 A No, sir, I did not.

2 Q You said it but you didn't mean it that he was the
3 centerpiece of the government's case?

4 A That's correct.

5 Q You're just lying to Selwyn Vaughn?

6 A I was telling him what I wanted him to hear.

7 Q Was it the truth or was it a lie?

8 A It was partially true and partially not true.

9 Q David Clarke being a witness was the partially true part?

10 A Yes.

11 Q The fact that he was important to the government's case,
12 that was a lie?

13 A No, that was true, too. He wasn't everything.

14 Q You're identifying a witness. You're just puffing him up
15 as just more important than he is?

16 A To Mr. Vaughn; yes, sir.

17 Q This is a person that following these conversations you
18 spent a great deal of time discussing with him finding out
19 where his family is and discussing whether or not they would
20 accept money, correct?

21 A I can't agree with your characterization. We discussed
22 David Clarke and his family, yes.

23 Q Did you or did you not discuss with him whether or not
24 family members would accept money?

25 A He said that.

1 Q When he said that, you never responded to him?

2 A I think I understand, I understand.

3 Q Is it your testimony you did not understand?

4 A I understood what he was saying.

5 Q You never had a substantive conversation with him back
6 and forth about paying David Clarke's family?

7 A I don't recall it as such, sir.

8 Q You don't recall having any conversation about paying
9 David Clarke?

10 A I recall having conversation about David Clarke, money
11 and property; yes, sir.

12 Q What you were discussing was -- this was your idea,
13 wasn't it, that you could pay David Clarke by buying a piece
14 of property in Guyana, correct?

15 A That came from me; yes, sir.

16 Q It was your idea to pay more than the property was
17 actually worth, right?

18 A That's what I said, sir.

19 Q Because no one ever really knew how much property costs
20 in Guyana, right?

21 A I think in words or substance. That's correct.

22 Q Meaning that you could pay the guy and no one would know,
23 right? That's the idea behind that transaction, right?

24 A That's what I said to Vaughn.

25 Q No trail left behind, right? You would cover your trail,

1 right?

2 A I think that's what I said to Vaughn.

3 Q That transaction would cover your trail, correct?

4 A Yes, sir.

5 Q The whole reason why you're talking about it with him,
6 right?

7 A No, sir.

8 Q You're coming up with this idea how to hide a payment to
9 a witness and it's not about covering the trail?

10 A No, sir.

11 Q Alicia Jagnarain, she could authenticate the drug
12 ledgers, right, if she testified?

13 A Yes, sir.

14 Q She could authenticate the voices on the Dave Persaud
15 tape, correct?

16 A I don't know, sir.

17 Q Well, one of the people you understood on the tapes was
18 Dave Persaud, correct?

19 A Yes, sir.

20 Q Your understanding was that Alicia Jagnarain was
21 familiar, if not intimate, with Dave Persaud, correct?

22 A Yes, sir.

23 Q She would be in a position, am I correct, to testify that
24 she heard and she recognized the voice of Dave Persaud on the
25 tapes?

1 A Yes.

2 Q So, she could authenticate the tapes; is that correct?

3 A In that way, yes, sir.

4 Q She's an important witness, correct?

5 A Yes, sir.

6 Q She's an important witness because she could put in drug
7 ledgers and recordings that linked to your client, correct?

8 A I can agree with the first part, not the last part, sir.

9 Q You don't believe they link to your client at all?

10 A I didn't really think so; no, sir.

11 Q Son was also somebody that we talked about, sir?

12 A Yes.

13 Q A guy who lives in the DC area, right?

14 A Yes, sir.

15 Q Sent Deb Martin to go see him?

16 A Yes.

17 Q It was testified she was an FBI ex-agent?

18 A Yes.

19 Q 26 or 27 years experience?

20 A That's what she said.

21 Q She testified, if you recall, she went there, found him.
22 He was very polite but he said I don't want to talk to you
23 unless my attorney gives permission; do you recall that?

24 A Yes, sir.

25 Q You recall telling Selwyn Vaughn that Vijay Jainai rne's

1 attorney is not giving permission to contact, to be contacted,
2 correct?

3 A That's what I told Vaughn.

4 Q Despite that, you had an e-mail sent by Ms. Irving
5 directing Selwyn Vaughn to go see Vijay Jainairne, correct?

6 A I believe on July 30th; yes, sir.

7 Q Even though this witness had made it clear he didn't want
8 to talk without his attorney giving permission. His attorney
9 wasn't giving permission, correct?

10 A No, sir.

11 Q Was it correct he said he doesn't want to talk without
12 his attorney's permission?

13 A That's what Deb Martin reported; yes, sir.

14 Q You lied to Selwyn Vaughn when you said his attorney
15 wouldn't give permission?

16 A I never spoke to his attorney.

17 Q You lied to Selwyn Vaughn?

18 A I did.

19 Q It was important to lie to Selwyn Vaughn about his
20 attorney not giving permission to contact Vijay Jainairne. It
21 was important enough for you to say that that you lied about
22 it?

23 A Whether it was important or not, one way or the other, I
24 just said it to him.

25 Q He would have gone to see Vijay Jainairne simply by you

1 telling him go see Vijay Jainairne, correct?

2 A Possible.

3 Q You're telling the guy to go see David Clarke in prison.

4 He says he's going to go see David Clarke, right?

5 A That's what I told us him; yes, sir.

6 Q You told him see Vijay Jainairne. Do you understand he's
7 going to see Vijay Jainairne, correct?

8 A That's my intent, yes, sir.

9 Q Intent to send him to go see Vijay Jainairne?

10 A Yes, sir.

11 Q You could have just told him go see Vijay Jainairne,
12 right, and he would have gone to see him, correct?

13 A That was what I would hope; yes, sir.

14 Q Whether or not he's represented, his attorney says you
15 can or cannot meet him, it's completely immaterial, right?

16 A That's true.

17 Q But nevertheless, it was important for you to lie to him
18 about that.

19 A I didn't say it was important. I just said I said it.

20 Q Said it because you just lied?

21 A Because I was just talking. My methodology, that's what
22 I say.

23 Q Let's explore this a little bit if I can. Your
24 methodology is just to say things whether they're true or
25 untrue?

1 A With respect to him. You're talking with respect to
2 Vaughn, right?

3 Q You weren't specific in your response. You said your
4 methodology.

5 A I was talking about Vaughn.

6 Q You speak only to Vaughn when you just lie?

7 A Not only Vaughn, but I wasn't lying to him. I was giving
8 him what information I wanted him to have.

9 Q But it's untrue.

10 A So?

11 Q So that's a lie.

12 A It's a lie; yes, sir.

13 Q And you decided what information to give to which
14 person -- withdrawn.

15 There was a meeting on July 11th, 2008 with
16 Selwyn Vaughn; do you recall that?

17 A No, sir, there was not.

18 Q I'm sorry, June 11th. I apologize. You're right.
19 June 11th, right?

20 A Yes, sir.

21 Q In that meeting with Selwyn Vaughn, he discusses -- at
22 this point you've already identified various people who you
23 didn't believe it but you told him were central to the
24 government's case like David Clarke, right? Talked about
25 David Clarke?

1 A Yes.

2 Q Alicia Jagnarain by then?

3 A Yes, sir, I believe so.

4 Q Started talking about family members, right, the idea of
5 getting to David Clarke through family members was discussed,
6 correct?

7 A That was a topic as well, sir.

8 Q George Allison was a topic?

9 A Yes, sir.

10 Q You really kind of are focusing on witnesses or --
11 excuse me, I'll use your definition, just persons, right,
12 people, right? Alicia Jagnarain is a person. David Clarke is
13 a person. George Allison is a person, right?

14 A The first two I thought potentially could be witnesses.
15 The last I did not think could be a witness; yes, sir.

16 Q You were concerned George Allison was a cooperator,
17 right?

18 A I didn't know one way or the other.

19 Q But if he was a cooperator, that could be problematic,
20 right?

21 A Probably wouldn't talk to us.

22 Q Please answer my question.

23 A I'm sorry, I thought I did, sir.

24 Q It's all right.

25 A You asked me problematic. That's how I'm responding.

1 The answer is no.

2 Q So, another witness the government had to put Khan in
3 drugs would not be problematic for you?

4 A No, I didn't think it would be.

5 Q So, there's conversation also about Leslyn Camacho by
6 then, correct?

7 A I believe so, sir.

8 Q At the end of the conversation -- during the
9 conversation, Selwyn Vaughn starts telling you things about
10 his network; do you recall that?

11 A I believe so, sir.

12 Q He's got a network of people that he can start to use to
13 locate these people, right?

14 A That's what he said.

15 Q Do you recall him describing his network of people of
16 being those that spent time in jail with Gerald; do you recall
17 that?

18 A People like that, I think he said; yes, sir.

19 Q People like that, that were in jail with Gerald?

20 A Yes.

21 Q People close to Roger he described; do you recall that?

22 A That's what he said.

23 Q He's got a network of people who are close to Roger and
24 used to be in jail, right?

25 A That's what he said.

1 Q Close to Roger, criminals, right?

2 A That's what he was suggesting. Yes, I think so.

3 Q This group was the group he was going to use with himself
4 to find people that you sent him to go find, correct?

5 A I think that's what he was saying; yes, sir.

6 Q That's what you understood, though, right?

7 A That's what I think he was saying; yes, sir.

8 Q I'm sorry. If I misunderstand you, I apologize. It's
9 what you understood, correct?

10 A I understood his words; yes, sir. That's what he was
11 saying.

12 Q In order to help him do this, he also suggested the fact
13 that he was going to need unregistered phones; do you recall
14 that?

15 A He said something like that; yes, sir.

16 Q He said unregistered phones, correct?

17 A I accept what you say; yes, sir.

18 Q As a prosecutor, former prosecutor and a criminal defense
19 attorney, you know about unregistered phones, right?

20 A I do.

21 Q Some people call them drop phones, right?

22 A I think so.

23 Q You've heard that phrase?

24 A I actually hadn't.

25 Q Hadn't?

1 A No.

2 Q Please don't adopt what I'm saying.

3 MR. SHARGEL: I object to this colloquy.

4 THE COURT: Overruled.

5 Q Please, just don't adopt what I'm saying. I want you to
6 answer my questions, okay?

7 These phones are used -- there's legitimate uses
8 for a phone not having a subscriber, right?

9 A Many.

10 Q Many. There's also an unlawful purpose for using
11 unregistered phones, right?

12 A I would think so.

13 Q Well, you would think so.

14 Have you ever had a case where a client or an
15 associate were using unregistered phones?

16 A Not that I'm aware of, sir.

17 Q You've done wiretap cases before, right?

18 A Some.

19 Q You know then one of the primary ways the government
20 identifies the speaker of the phone is by simply going to the
21 phone company, saying whose phone is this registered to,
22 right?

23 A Yes, sir.

24 Q If a person using that phone doesn't have a correct
25 subscriber or no subscriber, it makes it more difficult,

1 correct?

2 A Yes, sir.

3 Q So, in your years of experience as a prosecutor or as a
4 defense attorney, you're familiar that criminals use
5 unregistered phones in order to hide just from law enforcement
6 finding them, right?

7 A Yes.

8 Q Now we have Selwyn Vaughn with his network of criminals
9 getting unregistered phones to find the people that you direct
10 him to find. That's your understanding of this meeting,
11 correct?

12 A That's what he said.

13 Q That's your understanding?

14 A That's what he said. That's what I understood him to
15 mean.

16 Q In order to do this, he explained that he needed some
17 expense money, right?

18 A Yes, sir.

19 Q The money was going to be to pay his network of guys, get
20 these unregistered phones?

21 A That's what he said; yes, sir.

22 Q Just to be clear, when you say that's what he said,
23 "that's what I understood," correct?

24 A That's my understanding of his meaning; yes, sir.

25 Q After this meeting, you sent Ms. Irving to go visit

1 Roger Khan, correct?

2 A I believe she went on the 13th, perhaps, sir.

3 Q 13th of June?

4 A Yes, sir.

5 Q Before she went, you discussed with her the substance of
6 your conversation with Selwyn Vaughn, correct?

7 A I probably did sir; yes, sir.

8 Q Do you recall it or not?

9 A I don't recall what I said to her; no, sir.

10 Q You explained that typically after meeting with a
11 client -- first of all, sending an associate to go see a
12 client, it's an important function, right, having interface
13 with the client?

14 A Yes, sir.

15 Q A client asks questions. The associate needs to be able
16 to get answers, right?

17 A Yes, sir.

18 Q Otherwise there's really no point. You're going to have
19 to wind up going the next day anyway, right?

20 A I don't totally agree with that, no.

21 Q If a client is not getting the answers he or she wants,
22 the associate can't give them, then you sending the associate
23 really didn't help you at all, right?

24 A In part; yes, sir.

25 Q You're winding up giving the associate more information

1 to go back or just go yourself, right?

2 A Very likely; yes, sir.

3 Q You can't have the client wondering or not getting any
4 information, right?

5 A Yes, sir.

6 Q While you don't have a recollection, your testimony is
7 you probably told Ms. Irving the substance of your
8 conversation with Selwyn Vaughn before she went to go see
9 Roger Khan, correct?

10 A Yes, sir.

11 Q When she came back, I think you testified on direct, it
12 was typically her practice to create memos after meeting
13 Roger Khan, correct?

14 A Yes, sir.

15 Q These memos are for you to read, right?

16 A Yes, sir.

17 Q They also go into the file, right?

18 A Yes, sir.

19 Q They serve an important function in that regard, right?

20 A Yes, sir.

21 Q They need to be accurate, right?

22 A Yes, sir.

23 Q They need to have as much information about what's going
24 on as possible, right?

25 A Yes, sir.

1 Q If there's not information contained in the memo, you
2 would either go back to Ms. Irving, say what's this about,
3 fair?

4 A Yes, sir, that's fair.

5 Q After the June 13th meeting, Ms. Irving created one of
6 those memos we discussed, correct?

7 A Yes, sir.

8 MR. D'ALESSANDRO: This is in evidence, your Honor.
9 I'll put it up on the screen, 554.

10 Q That's you, RMS?

11 A Yes, sir.

12 Q The first bullet point, RK, Roger Khan, right?

13 A Yes, sir.

14 Q Roger Khan told Rob Simels -- he couldn't speak to you,
15 right?

16 A Correct.

17 Q You weren't at this meeting?

18 A No.

19 Q Ms. Irving is passing along what Roger Khan said to her
20 to pass along to you, correct?

21 A Yes, sir.

22 Q Roger Khan told RMS you, your discretion, in giving money
23 to Fineman, correct, for his investigation to use?

24 A Yes.

25 Q Fineman is Selwyn Vaughn?

1 A Yes, sir.

2 Q He, Roger Khan, correct?

3 A Yes.

4 Q Said started with \$1,000 and see if he, that's Fineman,
5 correct?

6 A Yes.

7 Q Get some results and then RMS can decide if he want to
8 give more money, correct?

9 A Yes, sir.

10 Q What that is saying, that Roger said go ahead, give my
11 man some money and if he produces, then if you want to you can
12 give him more, right?

13 A Yes, sir.

14 Q This money was the direct response to Selwyn Vaughn's
15 request for money, correct?

16 A Yes, sir.

17 Q And that's money to use his network of criminals to pay
18 for unregistered phones to find the people that you guys
19 wanted him to find, correct?

20 A Yes, sir.

21 Q It continues. RK said to make sure to tell Fineman to
22 not do anything stupid in terms of Clarke's mother, and that
23 he will leave it to RMS to decide if someone should go speak
24 to her. He leaves it to RMS legal opinion about my
25 ramification. You see that?

1 A Yes.

2 Q That is in direct response to Selwyn Vaughn's suggestion
3 about the possibility of harm coming to a witness' mother,
4 correct?

5 A Yes, sir.

6 Q So, you, from reading this memo, does it refresh your
7 recollection, sir, that you told Arienne Irving before she met
8 with Roger Khan on June 13th, 2008 that Fineman needs money.
9 He needs it for specific reasons in order to do what we needs
10 him to do and Selwyn Vaughn is willing to approach witnesses'
11 mothers, find out what he thinks about them, does it refresh
12 your recollection?

13 A Doesn't refresh my recollection what I told her. I have
14 a sense what I told her if you want me to tell you that.

15 Q Sir, when you got this memo, you understood what
16 Roger Khan meant, correct?

17 A Yes, sir.

18 Q Did you go back to Ms. Irving and say what did you mean
19 by this line, I don't understand it?

20 A I don't think I did, sir.

21 Q This memo was enough for you to what Roger Khan wants you
22 to do?

23 A Yes, sir.

24 Q On the 4th point, Roger Khan said he want to wait until
25 the judge rules on the 404(b) motion before writing down what

1 Fineman should testify to as we may not need everything if the
2 judge doesn't let it in. You see that?

3 A I do.

4 Q Roger Khan is explaining to you is that let's find out
5 how the judge rules on a specific motion before I write down
6 the script of what I want Fineman to say on the stand, right?

7 A Totally false, sir.

8 Q The memo is false?

9 A No, totally false what you're saying.

10 Q That's not your understanding?

11 A Not at all, sir.

12 MR. D'ALESSANDRO: Might I have a moment, your
13 Honor?

14 THE COURT: Yes.

15 (Pause.)

16 Q After this meeting, you understood that you were
17 authorized by Roger Khan to give Selwyn Vaughn a thousand
18 dollars, right?

19 A Yes, sir.

20 Q That was for, as it's couched in the memo, is
21 investigation, right?

22 A (No response).

23 Q The memo describes it as his investigation, correct?

24 A That's what it says; yes, sir. That's what it was for.

25 Q On June 20th, 2008, you gave him the money, correct?

1 A I'm sorry?

2 Q On June 20th, 2008 you gave Selwyn Vaughn the money?

3 A I did.

4 Q A thousand dollars?

5 A A thousand dollars.

6 Q That's a thousand dollars that's reference in the memo,
7 correct?

8 A Yes, sir.

9 MR. D' ALESSANDRO: In evidence, Government Exhibit
10 901.

11 Q \$1,000 cash, you gave to Selwyn Vaughn during the
12 June 20th, 2008 meeting, correct?

13 A I gave him a thousand dollars; yes, sir.

14 Q From this memo, I believe you testified you didn't need
15 to have any more conversation with Ms. Irving about what
16 Roger Khan wanted, correct?

17 A Correct.

18 Q You knew just from this memo what needed to be done,
19 correct?

20 A Yes, sir, I did.

21 MR. D' ALESSANDRO: R 13, page 21, line 31.

22 (Audio played.)

23 Q In that portion of the conversation, page 21, line 31,
24 you hand Selwyn Vaughn this thousand dollars, correct?

25 A I hand him a thousand dollars; yes, sir.

1 Q Then explained to him with regards to David Clarke, he
2 said, meaning Roger Khan, don't kill the mother, correct?

3 A That's what I said, sir.

4 Q You're telling him Roger Khan says don't kill
5 David Clarke's mother, correct?

6 A That's what I said, sir, yes.

7 Q You explain to him the reason why you don't want him to
8 kill David Clarke's mother is because the government will, as
9 you say, go crazy, right?

10 A Yes, sir.

11 Q It's your experience that the government does take a
12 murder rather seriously, right?

13 A Yes, sir.

14 Q We take the murder --

15 MR. SHARGEL: Objection to the form of the
16 question.

17 Q It's your experience that the government takes the murder
18 of a family member of a prospective witness very seriously,
19 correct?

20 A Yes, sir.

21 Q There would be an investigation, correct?

22 A No question.

23 Q You're explaining to him get David Clarke off the stand
24 by whatever means necessary, just don't kill his mother.

25 Isn't that what you're saying?

1 A No.

2 Q Is it your testimony that you're trying to discourage him
3 from committing violent acts against David Clarke or his
4 family in this conversation?

5 A Yes.

6 Q You're telling a man -- you're giving this guy a
7 thousand dollars cash to go out with his band of criminals
8 with unregistered phones to find the family members of federal
9 witnesses, correct, David Clarke, right?

10 A No, sir.

11 Q You're giving this man a thousand dollars to go out with
12 his band of criminals, unregistered phones, very hard for the
13 government to find out, track who is using them, what's going
14 on, and your only instruction is don't kill his mother?

15 A No, sir.

16 Q That's not your only instruction to him?

17 A No, that wasn't what I was setting him out to do, sir.

18 Q There's more?

19 A Look at the end of the tape, you'll see what I actually
20 tell him to do is go find various people. I give him a list
21 of who I want him specifically to see, Loretta Wilshire,
22 Alicia Housman, Allen -- if you go to the end of the tape,
23 that's what I talk about, I say I need a Guyanese
24 investigator. He says you got one now.

25 Q He tells you, sir, does he not, with regards to the

1 investigator, that he can't go out with your investigator
2 because your investigator and him would have different
3 agendas, yes or no?

4 A Those are his words, absolutely.

5 Q You understand in this person's mind what he's telling
6 you, what you understand is that I'm not doing this for a
7 lawful purpose, right?

8 A No, sir.

9 Q So, then, but I'm doing it for a lawful purpose but I
10 can't go out with your investigator, Deb Martin?

11 A If you read what he said later on, he says I can't go out
12 with a flat footer, a guy that looks like a cop. That's what
13 he's telling me. So, as he's explaining to me it doesn't
14 matter, he himself has to be able to go, not with a white
15 police-looking person into the community because he won't
16 accomplish anything for me, just like the white investigators
17 did not accomplish anything up to that point for me.

18 Q The word is agenda, sir. He says agenda.

19 A He did use that word.

20 Q That means plan, correct?

21 A That's his word. You'll have to ask him his meaning.

22 Q I'm interested in what you understand. He used the word
23 agenda. Does agenda also mean plan?

24 A Yes, sir.

25 Q It means strategy, right?

1 A Yes, sir.

2 Q It means these are the things we need to accomplish,
3 correct? The agenda, you have an agenda for the meeting.
4 Thanks for the meeting. Here's our agenda, the things we need
5 to accomplish, right?

6 A Not that way, but yes.

7 Q The plan, the reason for Deb Martin is different than
8 his. He explained that to you, correct?

9 A I'm sorry, could you say that again?

10 Q He explained that to you. Deb Martin's agenda and his,
11 Deb Martin's purpose, his purpose differ, correct?

12 A No, that's not how I took it, sir.

13 Q You tell this man -- you don't tell him, right, look
14 don't kill the guy's mother. Don't kill anybody. You don't
15 say that, right?

16 A I didn't say don't kill anybody; no, sir.

17 Q You didn't say look, just do this. What are you talking
18 about unregistered phone? Just go and see these people and if
19 there's any problem, walk away. You don't say that, right?

20 A No, sir, I did not.

21 Q You just say put pressure on David Clarke, just don't
22 kill his mother, right? You say well, he would like as much
23 pressure being put on Clarke as possible but he thinks if
24 Clarke's mother gets killed, the government would go crazy,
25 correct?

1 A That's what I said, sir, yes.

2 Q You put a ceiling on his activity to kill the mother but
3 everything else --

4 MR. SHARGEL: I object, argumentative.

5 THE COURT: Overruled.

6 (Continued on next page.)

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Simels - cross - D'Alessandro

1 BY MR. D'ALESSANDRO:

2 Q. The ceiling, Don't kill the mother, but everything that
3 falls underneath is okay; that's what you are telling us?

4 A. 100 percent false, sir.

5 Q. You didn't say these words on line eleven through line
6 twelve?

7 You said the words in this transcript; correct?

8 A. I said words in that transcript, sir.

9 Q. You then mention Leslyn Camacho and George.

10 That's George Allison; right.

11 A. Yes.

12 Q. It's Chinaman, Donald Allison's brother; right?

13 A. Yes, sir.

14 Q. Donald Allison, you heard testimony, was murdered;
15 right?

16 A. Yes, sir.

17 Q. And Selwyn Vaughn says, on line 26: "So, you want --
18 what you want me to go with them now, George and these other
19 people?"

20 You say: "What's that?"

21 And he asks for clarification. "What will he want me to
22 do with them, George and the other people?"

23 Do you see that?

24 A. Yes.

25 Q. Selwyn Vaughn is asking you: "Thanks for the thousand

Simels - cross - D'Alessandro

1 dollars. I'm going to go out and get my phones and go out
2 with my network of guys, George and Leslyn. What do you want
3 me to do with them"; right?

4 He's asking you; right?

5 A. That's what he says there, sir, yes.

6 Q. And you tell him "With George," -- that's Roger Khan;
7 right?

8 A. Yes, sir.

9 Q. Arienne Irving is providing you with these instructions
10 from Roger Khan; isn't that right?

11 A. No, sir.

12 Q. It's not in this memo, 554, about George Allison; right?

13 A. Nor is there anything about don't-kill-the-mother in
14 that memo; that's correct.

15 Q. Don't do anything stupid?

16 A. That's what she reported to me Roger Khan said to her.

17 Q. That's a verbatim transcript of what Roger Khan said?

18 A. Arienne usually take things down that way, yes.

19 Q. With George, he said -- that's Roger -- "You can
20 deal with George however you think. That's you Mr. Robert
21 Simels. "Do you think George has to be dealt with in terms of
22 finding out where he is in this thing?"

23 A. No, I was talking about Vaughn there.

24 Q. Talking about Vaughn who?

25 A. Vaughn. He says: "You can deal with George however you

Simels - cross - D'Alessandro

1 do."

2 Q. In terms of finding out where he is in this thing?

3 A. Yes, sir.

4 Q. And Vaughn is talking about -- with you by this point
5 neutralizing the witness. "We either need to bribe them, buy
6 them, or strike fear in them"; right?

7 You already said that?

8 A. I think he did that on a different day.

9 Yes, sir he made those comments.

10 Q. Fair enough, it was a different day, it was before this?

11 A. That's true, sir.

12 Q. So, this guy, with his unregistered phones and his
13 criminal associates, who has in his mind, as you understand
14 it, Send me out to these people, we'll neutralize them by
15 either paying them off or striking fear in them, you can find
16 out, deal with him -- has to be dealt with in terms of
17 finding out where he is in this thing. If he's cooperating,
18 that's a bad thing, bad for Roger Khan; correct?

19 A. Yes, sir.

20 Q. So, not quite accurate when you testified earlier that
21 George Allison was cooperating, didn't make any difference;
22 correct?

23 A. It didn't really, sir.

24 Q. You're explaining to Selwyn Vaughn, though, if George
25 Allison is cooperating, it's a bad thing?

Simels - cross - D'Alessandro

1 A. Any cooperator is a bad thing, yes, sir.

2 Q. But when I asked you those questions earlier, you said
3 it didn't matter?

4 A. I didn't think George Allison played significantly one
5 way or the other in Roger Khan's case.

6 Q. This guy meant nothing to you?

7 A. No, sir, other than the information he can provide on
8 David Clark.

9 Q. Then you say: "He wants to talk to you. We want him to
10 talk to us about Clark."

11 Then you say: "I, I don't think he "-- meaning
12 Roger Khan -- "cares about Chinaman in terms of, 'cause I,
13 I don't think they'll" -- meaning the government; correct.

14 A. Yes, sir.

15 Q. -- "put the heat, the heat on him," meaning Roger
16 Khan; correct?

17 A. Yes, sir.

18 Q. "That screwing around with the mother would, I mean
19 doing something violent to her"; correct?

20 A. Those are the words, yes, sir.

21 Q. You told this man, David Clark, don't kill his mother,
22 because the government goes crazy and he'll be in the SHU,
23 but with George, you don't think that the government will put
24 the same amount of pressure on Roger Khan if something
25 violent happens to his mother; that's what you are telling

Simels - cross - Solano

1 him; right?

2 A. Absolutely you have that wrong.

3 Q. Selwyn Vaughn was a loaded weapon that you just aimed at
4 a group of witnesses and just said, Here is a thousand
5 dollars, get it done; right?

6 MR. SHARGEL: Judge, I object to this.

7 THE COURT: Overruled.

8 A. Absolutely false.

9 Q. The only instruction you gave him is, Just don't kill
10 David Clark's mother; right?

11 A. No, sir.

12 MR. D'ALESSANDRO: I have nothing further of this
13 witness, your Honor.

14 THE COURT: Thank you.

15 Mr. Solano.

16 MR. SOLANO: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MR. SOLANO:

19 Q. Good afternoon, Mr. Simels.

20 A. Good afternoon, sir.

21 Q. Let me just start asking you some questions about
22 Arienne's employment in general, and then I'll move on to the
23 meetings.

24 A. Okay.

25 Q. You were retained by Roger Khan or Roger Khan's family

Simels - cross - Solano

1 in August of 2006; correct?

2 A. That's correct, sir.

3 Q. And Arienne Irving didn't start working at your firm
4 until sometime in December, mid-December, of 2006; right?

5 A. That's correct, sir.

6 THE COURT: Come on up for a second.

7 Sorry to interrupt, Mr. Solano.

8 (Sidebar.)

9 THE COURT: What you are doing now is fine, it's all
10 introductory, but unless you persuade me otherwise, I'm going
11 to tell you, when you get to the key stuff, not to lead.

12 MR. SOLANO: Okay.

13 THE COURT: All right.

14 MR. SOLANO: Sure.

15 THE COURT: If you want to persuade me otherwise,
16 that's why I invited you up here.

17 MR. SOLANO: Sure.

18 THE COURT: You are sure you do want to persuade
19 me?

20 MR. SOLANO: I'm sure I'm not going to lead.

21 (In open court.)

22 MR. SOLANO: May I continue, your Honor?

23 THE COURT: You may.

24 I apologize for the interruption.

25 BY MR. SOLANO:

Simels - cross - Solano

1 Q. So, she began working in August -- I'm sorry --
2 mid-December of 2006; correct?

3 A. Yes, sir.

4 Q. And who else, if anyone, did you have working at your
5 firm around that time, in terms of associates?

6 A. I think when Ms. Irving started, that Alexandra Van
7 Doros was a senior associate. I don't know whether Alana
8 Bernfeld was still with us or not at that point.

9 Q. When you say that Ms. Van Doros was a senior associate,
10 was she more senior than Arienne Irving?

11 A. Much more.

12 Q. Much more senior?

13 A. Yes.

14 Q. I think during the direct examination of Mr. Shargel,
15 you talked about some of the things that were being done on
16 the Roger Khan case in those beginning months of your
17 retention.

18 Do you recall that?

19 A. Yes.

20 Q. You described a bail application or some legal documents
21 that were going to be filed in terms of bail?

22 A. Yes, sir.

23 Q. And which one of the associates, if anyone, was working
24 on that?

25 A. Well, Alana Bernfeld and Alexandra Van Doros.

Simels - cross - Solano

1 Q. Arienne wasn't working on that?

2 A. Yes, sir.

3 Q. Is it fair to describe Ms. Irving's role during the time
4 of the Khan defense one of getting documents together for
5 witnesses?

6 A. Yes, sir.

7 Q. In fact, Mr. White was retained, Diarmuid White was
8 retained, to do the legal writing?

9 A. Yes, sir.

10 Q. Did Arienne do any legal writing with regard to the
11 Roger Khan case?

12 A. I don't think so, but she might have contributed
13 something in the summer of 2008.

14 Q. Contributed maybe a portion of a legal writing?

15 A. Yes, sir. She had done research for me.

16 Q. By the way, approximately how much was Ms. Irving's
17 salary when she began in December of 2006?

18 A. Approximately 50, \$55,000, somewhere in that
19 neighborhood.

20 Q. And that was a salary, it was not by hour; right?

21 A. Yes, sir.

22 Q. It was salary?

23 A. Yes, sir.

24 Q. And she was required to work whatever amount of time she
25 needed to get whatever assignment she had completed?

Simels - cross - Solano

1 A. That's correct, sir.

2 Q. Now, we talked a lot about or we've heard a lot about
3 that -- the memos that Ms. Irving wrote. Approximately how
4 many memos did Ms. Irving write from the time that she
5 started working on the Khan case when she came in in December
6 of 2006 until the arrest on September 10 of 2008, just an
7 approximation?

8 A. I'm estimating, but probably a couple of hundred, maybe
9 300.

10 Q. You stated during cross-examination that Ms. Irving's
11 habit was to sort of write things verbatim, or something to
12 that effect.

13 Can you explain what you meant by that?

14 A. In every time I've been with her at a meeting, she's
15 taken very copious notes, very accurate notes, of what is
16 being described, and when she translates it into a typed
17 memo, she puts those copious or accurate notes into the memo.

18 Q. As far as your understanding -- you've had an
19 opportunity to read her memos after meetings; correct?

20 A. Yes.

21 Q. And was it ever her practice to change meanings in
22 memos, or would she pretty much put it down word for word?

23 A. She had put it down as her notes indicated, sir.

24 Q. Now, did she ever go to Guyana, by the way?

25 A. She did not.

Simels - cross - Solano

1 Q. We talked a little bit about the investigators in this
2 case. Was one of her duties providing information to
3 investigators?

4 A. Yes, sir.

5 Q. And she -- some of the investigators were people like
6 Mr. Gonzalez?

7 A. One of them, yes, sir.

8 Q. And Chuck Avakian?

9 A. Yes.

10 Q. And the list goes on?

11 A. At least ten or more investigators, yes, sir.

12 Q. Let me bring your attention to the May 13, 2008 meeting?
13 You set that meeting up with Mr. Vaughn; correct.

14 A. Yes, sir.

15 Q. And that was as a result of him calling you on May 13,
16 2008?

17 A. Yes, sir.

18 Q. Before that meeting actually occurred on May 13, you
19 didn't tell Ms. Irving that Fineman -- that this person
20 Fineman was coming in?

21 A. I did not.

22 Q. He just showed up and he happened to be at the office?

23 A. I probably told her that somebody called and said they
24 were coming in, and for her to be available, yes.

25 Q. Why did you need her to be available?

Simels - cross - Solano

1 A. She was working on the Khan case, and I wanted her to
2 sit in to hear whatever this person had to say.

3 Q. She came in on the May 13 meeting to take notes?

4 A. Primarily, she was there for that purpose, yes.

5 Q. When you say "Primarily," what was the other roles or
6 duties that she had in that meeting?

7 A. If she was not in there, I would have to sort of fill
8 her in on some of the meeting afterwards. So, it was easier
9 to have her there.

10 Q. Now, she was coming in and out of that May 13 meeting;
11 correct?

12 A. Yes, sir.

13 Q. And I think -- and tell me if I'm wrong -- when they
14 played the May 13 meeting, you could hear her heels when
15 she's coming into the meeting or leaving the meeting;
16 correct?

17 A. Yes, sir.

18 Q. And after the May 13 meeting, she created a memorandum?

19 A. Yes, sir.

20 Q. That's in evidence and you've read that; correct?

21 A. Yes, sir.

22 Q. Now, specifically to the June 11 meeting, you set that
23 meeting up with Fineman; correct?

24 A. Yes, sir.

25 Q. Might have had nothing to do with setting up the June 11

Simels - cross - Solano

1 meeting?

2 A. No.

3 MR. D'ALESSANDRO: Objection to form.

4 THE COURT: Sustained.

5 Q. Did Arienne Irving have anything to do with setting up
6 the meeting on June 11?

7 A. No, sir.

8 Q. Just to be clear: Was Ms. Irving present on the June 11
9 meeting?

10 A. No, sir.

11 Q. Where was Ms. Irving?

12 A. At jury duty.

13 Q. And she was -- do you recall how many days she was in
14 jury duty?

15 A. It was that week. I don't recall how many days.

16 Q. If I told you the 11th and the 12th of June, would that
17 refresh your recollection?

18 A. It's possible those were the only two days.

19 Q. In fact, there's a portion of that recording which I
20 would like to show you -- if I can just have one second to
21 turn to it, your Honor?

22 THE COURT: Yes, you may.

23 Q. This is T-10, page 30, line 25, and if I can just give
24 you this introductory to this piece of the transcript.

25 You had gone and you were having a conversation with

Simels - cross - Solano

1 Fineman; correct.

2 A. Yes, sir.

3 Q. At some point, you needed some information that you
4 cannot locate; right?

5 A. Yes, sir.

6 Q. And then you called Arienne Irving?

7 A. Yes, sir.

8 Q. And left a message?

9 A. Yes, sir.

10 Q. And then she calls back?

11 A. That's correct, sir.

12 Q. And then the unidentified female says, beginning on line
13 25, "Arienne is on line one."

14 That's Juanita Singh, the secretary.

15 A. That was Juanita, yes, sir.

16 Q. Then you say: "Okay, Arienne."

17 Ms. Irving says: "Hey, Robert, how is it going?"

18 You then continuing: "All right. Good. A couple of
19 things. Where do I find Leslyn Camacho's address?"

20 Ms. Irving responds: "It is, um, it's actually in,
21 there's a file that's labeled 'Leslyn Camacho.'"

22

23 And you say: "Where?"

24 She says: "You know, actually, it might be easier for
25 you to find it. It's on the to-do list."

Simels - cross - Solano

1 Without me having to go on, she describes to you where
2 this piece of information is.

3 A. Yes, sir.

4 Q. Before you asked her for that piece of information, did
5 you explain to her why you needed the information?

6 A. No, sir.

7 Q. Just asked her; right?

8 A. Yes, sir.

9 Q. If I can continue on page 32, line 17, you then say:
10 "I'm sitting here with Fineman."

11 Ms. Irving says: "Is that why you need the names looked
12 up?"

13 You say: "Yeah, yeah, okay."

14 That's because she didn't know that Fineman would be
15 sitting with you on that for a meeting.

16 A. Correct, sir.

17 Q. In fact, was it your practice, Mr. Simels, to tell
18 Ms. Irving everything about what was going on with the case
19 at all times?

20 A. Not at all times, sir, no, sir.

21 Q. Now, let me turn your attention to the June 20 meeting,
22 which is 401-T-13. If I could specifically go to page 17,
23 line 31. At this meeting, the June 20 meeting, Ms. Irving
24 was also in and out of that meeting; right?

25 A. Yes, sir.

Simels - cross - Solano

1 Q. Again, you could hear her heels when she's coming in and
2 out of the meeting?

3 A. Yes, sir.

4 Q. Beginning on line 31, you say: "Well, the point of the
5 matter is that none of these prosecutors had ever been to
6 Georgetown or to Guyana. Don't, yeah."

7 Ms. Irving says: "Who is it?"

8 That is in response to Juanita, the secretary, saying
9 that somebody was on the line.

10 A. That's correct.

11 Q. Ms. Irving responds -- you respond: "Who?"

12 And Ms. Irving responds: "The person you asked for,
13 Reagan"; right?

14 Can you remind the members of the jury who Reagan is.

15 A. Mark Reagan was an employee of Willems Timber, was a
16 major timber company that Roger Khan owned in Guyana with
17 others, and he worked in the office.

18 Q. Did you have any reason to believe at any point that
19 Reagan was anything other than a Willems Timber employee?

20 A. Never.

21 Q. So, continuing on page 18, line 2, you say: "Oh, good,
22 you know Reagan; right?"

23 Then you have a conversation with Vaughn regarding
24 Reagan, and then you go on to some other things; correct.

25 A. Yes, sir.

Simels - cross - Solano

1 Q. Right before that conversation, Ms. Irving leaves the
2 office to go speak to Reagan; correct?

3 A. That's correct.

4 Q. And in fact, she stays out of the office at that time
5 for at least forty minutes; correct?

6 A. She was out quite while talking to Reagan, yes, sir.

7 Q. Talking to Reagan; correct?

8 A. Yes, sir.

9 Q. In fact, if I can show you -- I believe this is
10 Government's Exhibit 804 in evidence, your Honor. Page four.
11 The date there is Friday, June 20; correct?

12 A. Yes, sir.

13 Q. And the "irvingaj," that you know to be Ms. Irving's
14 e-mail address; correct?

15 A. That's her Yahoo account.

16 Q. "Reaganmark" would be Reagan?

17 A. Yes.

18 Q. What time does this instant-message session begin?

19 A. It says 1:36 in the afternoon.

20 Q. 1:36 p.m.?

21 A. Yes, sir.

22 Q. Do you recall the time that the meeting began with
23 Fineman on the 20th of June?

24 A. Sometime after 1:00 o'clock in the afternoon, Mr.
25 Solano.

Simels - cross - Solano

1 Q. This session continues from page four, continues through
2 page five, and ends on page six?

3 A. Correct.

4 Q. What time does the session end?

5 A. 1402, which I take to mean 2:02 in the afternoon.

6 Q. So, about thirty minutes is Ms. Irving on an instant
7 message with Reagan?

8 A. That's correct.

9 Q. By the way, the June 20 meeting that you had with
10 Fineman, that was in your office?

11 A. Yes, sir.

12 Q. And Ms. Irving, when she was instant-messaging Reagan,
13 she was doing that from her office; correct?

14 A. Yes, sir.

15 Q. In fact, do you recall there's a portion of the June 20
16 meeting where you walk out and then you come back in and you
17 tell Fineman, We're on the line with Reagan; correct?

18 A. That's correct.

19 Q. Because you had gone out, you had spoken to Ms. Irving
20 when she was on the line with him; correct?

21 A. Yes, sir.

22 Q. During the time that she's speaking to Reagan, that's
23 when this conversation about money, about Clark's mother,
24 that's when all that stuff happens; right?

25 A. I presume so, sir.

Simels - cross - Solano

1 Q. Now, by the way, if I can just show you Government's
2 Exhibit 554?

3 THE COURT: It's in evidence; right?

4 MR. SOLANO: Yes, your Honor.

5 Q. This is the June 13 memo. You saw this, Mr. Simels;
6 correct?

7 A. Yes.

8 Q. Now, you testified on cross-examination that after
9 having the meeting with Fineman on June 11, that you informed
10 Ms. Irving of the meeting that you had with Fineman.

11 Do you recall that testimony.

12 A. Yes.

13 Q. You didn't tell Ms. Irving every single detail of that
14 meeting; correct?

15 A. I did not.

16 Q. In fact, what you told Ms. Irving, if anything, was to
17 ask Roger if he would okay money for a Fineman investigation?

18 A. I think yes.

19 Q. In fact, you actually went to visit Roger on the 9th of
20 June; correct?

21 A. Very possible.

22 Q. Okay.

23 MR. SOLANO: One second, your Honor.

24 (Pause.)

25 Q. Mr. Simels, did Arienne Irving ever use the word "Kill

Simels - cross - Solano

1 the mother" or "Don't kill the mother" in any form?

2 A. Never.

3 Q. Did you ever tell Arienne Irving, in any way or any
4 form, about doing harm to David Clark's mother?

5 A. I did not.

6 Q. Okay.

7 What did you understand -- I'm going to look at now the
8 June 13 memo, the second bullet point -- that Roger Khan
9 said to make sure to tell Fineman not to do anything stupid
10 in terms of Clark's mother, and that he will leave it up to
11 RMS to decide if someone should go speak to her. He leaves
12 it up to RMS legal opinion about any ramifications.

13 What did you understand that to mean.

14 A. I took Ms. Irving's remarks, her and that of Roger's, to
15 be responsive to my questions that I sent her to ask him, to
16 ask Roger Khan about. And I took it to mean that I should
17 tell him, Don't do anything stupid.

18 I told -- she told me he authorized a thousand dollars
19 to give him for investigative purposes and see what he could
20 develop, and how I would explain to this guy -- and how I
21 would explain to Vaughn what the legal ramifications would be
22 if he did anything violent to anybody, and that we would be
23 harmed beyond belief if he did anything violent to anybody.
24 That's what I took it to mean, and that's what we discussed.

25 Q. Now, there's another bullet point here on Government's

Simels - cross - Solano

1 Exhibit 554. Before I get to that, let me back up a second?

2 You testified during the direct examination of
3 Mr. Shargel that there was something about an anonymous jury
4 motion pending. Do you recall that.

5 A. Yes, sir.

6 Q. At the time of this memo, was that motion still pending?

7 A. No. It was already decided.

8 Q. It was already decided?

9 A. Yes.

10 Q. What was the result of that?

11 A. The judge had directed that there be an anonymous jury.

12 Q. Bringing your attention to this bullet point back on
13 Government's Exhibit 554 that begins "RK said he wants to
14 wait until the judge rules on the 404(b) motion and before
15 writing down what Fineman should testify to."

16 What did you understand that to mean.

17 A. Because we didn't know where we were in the status of
18 the case. There were certain motions pending before the
19 judge. One of them was a 404(b) motion. That was a motion
20 that the prosecutors had filed asking the judge for
21 permission to introduce evidence of the Donald Allison murder
22 and of the Dave Persaud murder. That had not been decided by
23 the judge and was not decided by the judge throughout the
24 summer and into September of 2008.

25 So, we didn't know whether or not the Donald Allison

Simels - cross - Solano

1 murder or whether the Dave Persaud murder would be part of
2 our case or not part of our case. We were waiting for the
3 judge to make a decision on that, to be able to figure out if
4 we needed any witnesses regarding that or no witnesses
5 regarding that. If we didn't need witnesses regarding that
6 issue, we didn't have to conduct an investigation. Then we
7 wouldn't have to worry about somebody to testify about those
8 issues.

9 Q. Did you understand that to mean to write down a script
10 for Fineman as to what to testify to?

11 A. No, I did not take it that way.

12 Q. Turning your attention to the July 18 meeting.

13 Was Ms. Irving present at that meeting.

14 A. I believe her to be in Ireland at that time.

15 Q. On the July 30 meeting, was Ms. Irving at the meeting on
16 July 30?

17 A. She may have been in and out of that meeting. I don't
18 recall.

19 Q. You don't recall?

20 A. No.

21 MR. SOLANO: If I may have a second, your Honor?

22 THE COURT: About how much more do you have?

23 MR. SOLANO: Ten, fifteen minutes.

24 THE COURT: Okay.

25 Let's take a break. Don't discuss the case.

Simels - cross - Solano

1 We'll resume in ten minutes.

2 All rise.

3 (Jury excused.)

4 THE COURT: We're in recess in the case on trial.

5 (Recess taken.)

6 (Continued on next page.)

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Si mel s-cross-Sol ano

1564

1 CONTINUING CROSS-EXAMINATION

2 BY MR. SOLANO:

3 (Jury enters courtroom)

4 THE COURT: Go ahead, Mr. Solano.

5 Q Mr. Simels, before we broke, I was asking you questions
6 about the time that you had visited Roger Khan before the
7 June 11th meeting with Selwyn Vaughn. You told me you don't
8 recall the date you visited him. I'm showing you Government
9 Exhibit 7103, have you take a look at this line that begins
10 June 10th. Tell me if that refreshes your recollection when
11 was the last time you met with Roger before the June 11th
12 meeting with Selwyn Vaughn.

13 A It does refresh my recollection. It would have been
14 June 10th.

15 Q You stated that after reading Ms. Irving's June 13th
16 memo, her meeting with Roger Khan, you understood that to mean
17 certain things, correct?

18 A I did.

19 Q Did that have anything to do with any conversations you
20 had with her?

21 A No, nor -- no, I'm sorry, no.

22 Q Between the June 11th meeting with Selwyn Vaughn and the
23 June 20th meeting with Selwyn Vaughn, did you go anywhere?

24 A I went to Guyana.

25 Q There was some discussion about both on direct

Si mel s-cross-Sol ano

1565

1 examination and cross-examination about payments that were
2 being offered either to Leslyn Camacho or David Clarke; do you
3 recall that?

4 A Yes, sir.

5 Q Did you at any point -- withdrawn.

6 The July 18th meeting was one of those meetings
7 where these discussions came up, correct?

8 A Yes, sir.

9 Q You believe Ms. Irving to be in Ireland on that date,
10 correct?

11 A Yes, with her family, yes.

12 Q Did you ever discuss with Ms. Irving the substance of
13 that July 18th memo -- meeting -- you had with Selwyn Vaughn?

14 A I did not.

15 Q Did you ever discuss with Ms. Irving at all any
16 discussions you had with Selwyn Vaughn about paying
17 Leslyn Camacho?

18 A None.

19 Q Did you have any discussions with Ms. Irving regarding
20 the possibility of paying David Clarke?

21 A No.

22 Q The money that was located in that drawer in your office,
23 that was a locked drawer?

24 A It's a locked drawer.

25 Q Did Ms. Irving have a key to that drawer?

Simel s-cross-Solano

1566

1 A No.

2 Q On September 10th when you were both arrested, do you
3 recall if Ms. Irving at the time of the proposed meeting or
4 the prospective meeting, do you recall what Ms. Irving was
5 doing?

6 A I think she was working on a different matter.

7 Q Do you recall the name of that client?

8 A I don't, but I know his case was ending here in the
9 Eastern District of New York. I know she was working on a
10 sentencing submission to go to Judge Irizarry on a different
11 matter.

12 Q If I could have one second to get a photograph and I'll
13 be done.

14 (Pause.)

15 THE COURT: Is this in evidence?

16 MR. SOLANO: It is, your Honor.

17 Q I'll show you what's in evidence as Irving Exhibit 5. Is
18 that the sentencing memo you're talking about that Ms. Irving
19 was working on at the time of the meeting with which
20 Ms. Comacho was to occur?

21 A Yes.

22 Q Does the name Orlando Jones --

23 A Orlando James.

24 Q I'm sorry.

25 A That's who it was.

Si mel s-redi rect-Shargel

1567

1 MR. SOLANO: Nothing further.

2 THE COURT: Any redirect?

3 MR. SHARGEL: Yes, your Honor.

4 REDIRECT EXAMINATION

5 BY MR. SHARGEL:

6 Q The meeting at the jail on July 29th, 2008, you remember
7 being asked questions about that?

8 A I do.

9 Q Do you remember what time of day it was?

10 A Morning hours, I believe.

11 Q Do you remember how long the meeting took place?

12 A An hour, hour and a half, maybe.

13 Q You were actually with Mr. Khan for an hour, an hour and
14 a half or was that the entire time that you were at the MCC?

15 A I believe that's the entire time. I don't recall
16 specifically. I think approximately that amount of time
17 between Mr. Dubin and myself meeting with Mr. Khan, somewhere
18 in that neighborhood.

19 Q Mr. Dubin was there for part of the meeting?

20 A Yes.

21 Q Then there came a time he left?

22 A That's correct, sir.

23 MR. SHARGEL: I would like to play what's been
24 marked into evidence, the recording, without the transcript,
25 the recording of N-15, beginning at 21:48.

Si mel s-redi rect-Shargel

1568

1 Q Beginning at 21:48, the same reference made when you were
2 on cross-examination, the page --

3 THE COURT: Would you do me a favor, put it on the
4 Elmo?

5 Q I'm not going to publish it to the jury so I'm oriented
6 as to what you're playing.

7 THE COURT: You're playing all three segments?

8 MR. SHARGEL: Yes.

9 (Pause.)

10 MR. SHARGEL: May I proceed?

11 (Audio played.)

12 MR. SHARGEL: The next segment, 26:08,
13 approximately five minutes later.

14 (Audio played.)

15 MR. SHARGEL: The next segment, the last segment,
16 101:40, 1 hour and 40 seconds into the conversation. I would
17 like that played.

18 (Audio played.)

19 MR. SHARGEL: Thank you.

20 Q You talk on this tape about needing money to pay
21 Leslyn Camacho?

22 A No, I did not.

23 Q Did you, by the way, ever write a letter to
24 Leslyn Camacho?

25 A I never did.

Simel s-redi rect-Shargel

1569

1 Q At any time during those two years of your
2 representation?

3 A Never.

4 Q There were questions asked on cross-examination about
5 trying to tape Alicia Jagnarain. You remember those
6 questions?

7 A Yes, I do.

8 Q I show you what's been marked for identification as
9 Defense Exhibit 362-A for identification. I ask you to look
10 at this document. I'll try to bring it in a little. I'll ask
11 you, as I have, whether you recognize this document.

12 A Yes, I do.

13 Q What do you recognize it to be?

14 A An exchange between Gerald Pereria and by e-mail on
15 February 2nd, 2007 shortly after I came back from Guyana.

16 MR. SHARGEL: I offer it into evidence.

17 THE COURT: Any objection?

18 MR. SHARGEL: The entire e-mail.

19 MR. D'ALESSANDRO: No objection.

20 THE COURT: Received.

21 (So marked.)

22 Q This is to Pereria, heard about him on February 2nd,
23 2007. Thank you for all your help. Second, do we have a last
24 name for Wilfred? Third, on your address is it La Penstance?
25 Fourth, they apparently moved Roger out of the very bad

Simel s-redi rect-Shargel

1570

1 location at the federal prison to a little better location. I
2 have spoken to the prosecutors today and they are going to
3 advise if they will insure he is put into general population.
4 I'll know by Monday. We need to stay on top of Shoo Loo about
5 calling Alicia.

6 Please remind us who Shoo Loo is.

7 A Shoo Loo was a person who was involved in drug dealing in
8 Guyana who told me he could contact Alicia by telephone and
9 demonstrate to us through the call that she was still
10 continuing to traffic in drugs after her cooperation had been
11 had.

12 Q Did the people in Guyana tell you they needed a tape
13 recorder?

14 A They did.

15 Q Let me show you what's been marked for identification as
16 Defense Exhibit S 362-D, ask you if you recognize this.

17 A I do, sir.

18 Q What do you recognize it to be?

19 A An exchange between Mr. Pereria and I regarding the tape
20 recording equipment I was to send to Guyana.

21 Q What's the date?

22 A February 8th, 2007.

23 MR. SHARGEL: Offer into evidence.

24 THE COURT: Any objection?

25 MR. D'ALESSANDRO: None.

Si mel s-redi rect-Shargel

1571

1 THE COURT: Recei ved, S 362-D.

2 (So marked.)

3 Q Starting the e-mail chain from the bottom, who should I
4 send from you to Hanoman with a copy to Gerald Pereria. Who
5 should I send the tape recording equipment to, you see that?

6 A Yes, si r.

7 Q Then the answer is send to Pereria, send the tape
8 recording equipment to me. You could ei ther use DHL or
9 Fed Ex.

10 Did you in fact follow up by sending a tape recorder
11 to this gentleman?

12 A I di d.

13 Q Mr. D'Al essandro played a copy of T-10, actual ly
14 transcript page 10, June 11th conversation at page 23 of the
15 transcript.

16 MR. SHARGEL: Could we put that up on the screen
17 and play that portion again? This is in evidence.

18 Does your Honor have the computer?

19 THE COURT: I have it set for laptop. There it is.
20 I can't quite read it.

21 MR. SHARGEL: Here's what I'll do. Can I use this
22 zoom?

23 THE COURT: You're zooming in on nothi ng.

24 Q The last part, it says right there, you were asked
25 questi ons --

Simel s-redi rect-Shargel

1572

1 MR. SHARGEL: You have that, your Honor?

2 THE COURT: I didn't say anything.

3 MR. SHARGEL: I thought you said something.

4 THE COURT: Sitting here minding my own business.

5 MR. SHARGEL: Very sensitive.

6 Q This transcript you're familiar with, you were asked
7 questions about this on cross-examination, this part of the
8 conversation on June 11th, 2008, correct?

9 A Yes, sir.

10 Q This is when Mr. Vaughn talks about Clarke, right?

11 A Yes.

12 Q You say neutralize Clarke. Then Mr. Vaughn picks up on
13 that, neutralize Clarke. We either try to buy them or we
14 gotta drive fear in them, is the only option. Your response
15 is I agree with you. I agree with you. You see that?

16 A Yes.

17 Q Do you recall when asked questions about this on
18 cross-examination, that's where the yellow highlighting which
19 is not there now stopped, correct?

20 A That's correct.

21 Q It goes on to say or you go on to say I'm not sure if
22 it's the weather outside, the, the drain on electricity, but
23 my computer shut down earlier. He says wow. You talk about
24 having refuted the whole thing. Were you facing Mr. Vaughn
25 when that conversation was happening or somewhere else, and if

Simel s-redirect-Shargel

1573

1 somewhere else, tell us.

2 A I was facing to the rear as I would type because my
3 computer is behind my desk near the window. So, I had swung
4 around to face the computer and was listening to Juanita sing
5 as she was coming in about the electrical problems.

6 Q Juanita entered the office during this time?

7 A Yes.

8 Q Juanita is your secretary, you told us?

9 A Yes.

10 Q Let me show you what's been marked for identification as
11 Defense Exhibit S 361. Do you recognize that, sir?

12 A Yes, sir.

13 Q What do you recognize it to be?

14 A That was -- that's my office.

15 Q Is that the photograph that you recognize as having been
16 taken by the searching agents on September 10th, 2008?

17 A It is, sir.

18 Q Is this as it appeared, as your office appeared and
19 furniture was placed when you met with Selwyn Vaughn on
20 June 11th, 2008?

21 A Yes, sir.

22 Q No different?

23 A No different.

24 Q This is your chair. Again, the agents took this
25 photograph, federal agents?

Si mel s-redi rect-Shargel

1574

1 A Yes, si r.

2 Q The chair is over here and the computer --

3 THE COURT: Over where?

4 MR. SHARGEL: I didn't offer it in evidence, that's
5 why.

6 I offer S 361 in evidence.

7 MR. D' ALESSANDRO: No objecti on.

8 THE COURT: Recei ved.

9 (So marked.)

10 THE COURT: Point on the Elmo, not the other item.

11 MR. SHARGEL: Judge, I'm doing the best I can.

12 THE COURT: Go ahead.

13 Q Here's the office. There's a computer moni tor on the
14 desk?

15 A Not on the desk.

16 Q This round thing, this semi circle is a desk?

17 A That's correct.

18 Q Over here we have the chair, correct?

19 A Yes, si r.

20 Q That's where you si t, right?

21 A Correct, si r.

22 Q The computer moni tor is on thi s shel f by the window,
23 right?

24 A Correct, si r.

25 Q When you're on the computer -- forgive me for stating the

Simel s-redi rect-Shargel

1575

1 obvious -- your back is turn to anyone sitting at your desk?

2 A Correct, sir.

3 MR. SHARGEL: 3500 SV 31 in evidence on the screen,
4 particularly the page about Fineman.

5 Q Are you familiar, sir, if not by exhibit number with the
6 January 18th, you heard about this on cross-examination, the
7 January 18th submission that Mr. Khan made and sent to you and
8 Darmuid White?

9 A I recall it; yes, sir.

10 Q In connection with the Rule 15 depositions?

11 A Yes.

12 Q This portion which has been referred to on
13 cross-examination, this portion deals with what Fineman could
14 or would testify according to Roger Khan, right?

15 A Yes, sir.

16 Q Tell us whether Roger Khan ever said to you in any of
17 your conversations with him that this is information that he
18 can testify to but it's not really true; did he ever say
19 anything like that?

20 A No.

21 Q Did he ever wing-wing, testify to, some hidden footnote
22 or anything like that?

23 A No, sir.

24 Q When Selwyn Vaughn is in your office and you show him
25 this document, you ask him to read what's contained on this

Simel s-redi rect-Shargel

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1 page and I think a little on to the next page as to what he
2 would testify to according to Khan. Did he ever say to you on
3 any of those conversations, during any of those conversations,
4 that it was false in whole or in part, ever say anything like
5 that to you?

6 A Never.

7 Q You were asked questions about Mr. Rodriguez,
8 Mr. Roberts, Mr. Bellfield. Why were you asking -- I'll put
9 this before you now.

10 Why were you asking the questions about them?

11 What were your thoughts about whether they had
12 participated in violence?

13 A Like with every other person, I was asking him what he
14 knew to help me broaden my base of knowledge. I didn't know
15 whether Paul Rodriguez or Bellfield or anybody else was
16 involved in one thing versus another, except as they portrayed
17 themselves to me. I was asking him because I didn't know, I
18 wanted to hear what he had to say but he never indicated
19 anything to me.

20 (Continued on next page.)

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Simel s - redi rect/ Shargel

1577

1 THE COURT: Try not to cover what you've covered
2 earl i er.

3 MR. SHARGEL: I don't have very much longer.

4 THE COURT: Something that sounds fami l i ar.

5 MR. SHARGEL: I understand that, Judge. I have very
6 l i t t l e l e f t .

7 REDI RECT EXAMI NATION CONTINUED

8 BY MR SHARGEL:

9 Q You were asked questions about the note that was taken
10 from the MCC -- a note by Roger Khan that said tell my letter
11 all, you can trust my lawyer, you remember all, underscored
12 twice; you remember that?

13 A Yes.

14 Q Did that pertain to the legal defense of Roger Khan as
15 opposed to the social matter?

16 A Yes, it did, and I wanted him to tell Vaughn to tell us
17 everything that he knew, so that we could evaluate the
18 information he had.

19 Q Just two other areas that I want to go into. One is that
20 Mr. D'Al e s s a n d r o asked you questions about whether you asked
21 Selwyn Vaughn at any time had you been involved in bombings or
22 torture and the answer is no, you didn't?

23 A I did not.

24 Q But did you have any basis to ask him such questions?

25 A I had no basi s. I've been told he was a totally

Simels - redirect/ Shargel

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1 different kind of person than anyone involved in that kind of
2 activity.

3 MR. SHARGEL: Can you put May 13 page 25 and then 26
4 on the screen.

5 Q Do we not have questions. I asked, and this is the first
6 meeting on May 13th: What did you know, if anything, about
7 Donald Allison dying and he says: Well, I know he was killed.
8 And I don't think we have to read the whole thing. The fact
9 is that you specifically asked him about whether he had
10 personal knowledge of who killed Donald Allison and his answer
11 was, no, right?

12 A Correct, sir.

13 Q And on the next page, page 26 you specifically asked him
14 --

15 THE COURT: Remember, I will let you sum up later.

16 MR. SHARGEL: I understand, Judge. This is actually
17 a question.

18 Q You asked him specifically about Donald Allison, did he
19 know whether Roger Khan committed the murder, right?

20 A I did. I asked him if Roger ever told him that he did
21 it.

22 Q And his answer was what?

23 A His answer was no.

24 Q And we don't even need it on the screen, page six, you
25 asked him about David Persaud and the circumstances of that

Simel s - redi rect/ Shargel

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1 murder, right?

2 A I did.

3 Q I have got one more question. You remember being asked on
4 cross-examination -- I don't think this was on touched at all
5 on direct examination, but you remember being asked about
6 money to David Clarke's family?

7 A Yes.

8 Q Did you, sir, ever pay a quarter of a cent, did you ever
9 pay any money to David Clarke's family?

10 A Never.

11 Q Did you ever pay any money to any of the other family
12 members relating to people that were alleged to have been
13 targets of corruption of some sort?

14 A Not a cent.

15 MR. SHARGEL: I have no further questions.

16 THE COURT: Thank you, Mr. Shargel.

17 Anything further from the government?

18 MR. D'ALESSANDRO: One moment, Your Honor.

19 Nothing further.

20 THE COURT: How about from you, Mr. Solano?

21 MR. SOLANO: No.

22 THE COURT: You can step down.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Anything further from the Defendant

25 Simel s?

Simel s - redi rect/ Shargel

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1 MR. SHARGEL: No, sir. Defendant Simel s rests.

2 THE COURT: Anything from the Defendant Irving?

3 MR. SOLANO: Yes. Ms. Irving calls Justin Kern.

4 THE COURT: Come up here, please. Good afternoon.

5 Mr. Solano, take a seat on the bench while the witness is
6 sworn.

7 J U S T I N K E R N , having been first duly
8 sworn/affirmed, testified as follows:

9 DIRECT EXAMINATION

10 Q Good afternoon, Mr. Kern.

11 A How are you?

12 Q Mr. Kern, are you employed?

13 A Yes, I am.

14 Q By whom who are you employed?

15 A BMB Consul ti ng.

16 Q And in what capacity are you employed by that company?

17 A I'm a I.T. consul tant systems engineering.

18 Q And can you explain, briefly, for the members of the jury
19 what that means?

20 A Essentially companies outsource their I.T. work to us.

21 We do network integration, network design, server sport,
22 desktop support. Pretty much anything computer related to a
23 company they would outsource to us.

24 Q How long have you been worked for BMB?

25 A About a year and a hal f.

Simels - redirect/ Shargel

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1 Q Do you have any training in I.T. that gives you specific
2 knowledge of I.T. work?

3 A I have my MCSE which Microsoft certified systems engineer
4 and I also have a Bachelor's degree in computer information
5 systems and several credits towards my masters in computer
6 science.

7 Q Did there ever come a time when your company was hired by
8 the Robert Simels law firm?

9 A Yes.

10 Q Approximately when was that?

11 A I believe, it was March '08.

12 Q And did you have an opportunity during that time to or
13 any time after that to do any sort of service support work for
14 the Simels law office?

15 A Yes.

16 Q And what specific work did you do with regard to the
17 servers?

18 A I believe in -- like it would have been April '08 we did
19 a spec of their systems just to find out pretty much the land
20 of their systems, any problems they might have with their
21 systems, things they can do to improve the network flow. So
22 we gave suggestions and shortly thereafter we made several
23 upgrades to their systems.

24 Q And I'm going to show you what's in evidence as Irving 8.
25 I ask you take a look at that?

Simels - redirect/ Shargel

1582

1 Do you recognize what that is, sir?

2 A Servers. Their servers and systems.

3 Q So these two pieces right here, those are the servers?

4 A Correct.

5 Q What's this piece right here in the middle?

6 A It's a UPC, a battery backup, also known -- UPS stands
7 for uninterruptible power supply, power source.

8 Q And can you explain to the members of the jury what the
9 function of the power supply is?

10 A Essentially, it has a battery in it. It does --
11 uninterruptible power supply. If power to the building is
12 lost this will keep anything that's plugged into sustained for
13 power as long as the batteries stay alive.

14 Q Now, did you have an opportunity to look at the back of
15 this piece?

16 A Yes, I did.

17 Q And can you explain to the members of the jury what the
18 back -- how the back appeared?

19 A Essentially, it has, I believe, there's eight power ports
20 that you would normally plug in any type of device to. In
21 this case there are two servers, a monitor, and it has a USB
22 port in the back. It has a serial port. These are both data
23 connections that would go out to a computer. It's got a cord
24 that goes into the wall. It's got a reset switch. Let me
25 think what else. I think that's about it.

Simels - redirect/ Shargel

1583

1 Q The reset switch, what is that for?

2 A If the power coming into the building is overloaded or
3 the amount of power being drawn from the device is overloaded.
4 It essentially acts like a circuit-breaker that you put in
5 your home to prevent damage to the device, it kicks off and
6 shuts down the device.

7 Q And the serial port connection, can you describe what
8 that looks like?

9 A It's got several ports. It is a little plug. It's like
10 it's got eight pins in it that you plug a cable into it, and
11 the other end of the cable would normally go into a computer.

12 Q Is that the connection that has a two little screws on
13 the side?

14 A Correct.

15 Q Now, is this the only UPS or power supply in Mr. Simels'
16 office?

17 A No, it is not.

18 Q Were there other ones that were the same or different?

19 A Well, there was, I believe, the identical model was in
20 the same room, a couple feet over to it. There was also
21 smaller ones on the desktops.

22 Q I'm going to show you what's in evidence as Irving 7. Let
23 me zoom in. This piece right here in the middle between the
24 copy and the file, is that another one?

25 A Correct.

1 Q Now, can you describe the size of this power supply?

2 A Probably, say, maybe 24 inches long, six inches wide,
3 maybe seven or eight inches tall.

4 Q Can you give us an idea of the weight, is it light, is it
5 heavy?

6 A Definitely got a lot of weight to it. It's probably,
7 maybe, 60 pounds or so.

8 Q Let me just show you one more photograph.

9 This is Irving 6 in evidence, do you recognize what
10 this is?

11 A Yeah, it a similar device. It is more for desktops as
12 opposed to servers, but it is a battery backup.

13 Q And do you recall where this UPS power supply was
14 located?

15 A Yes, there was one of those in Arienne's office.

16 MR. SOLANO: I have nothing further, Your Honor.

17 THE COURT: Thank you, Mr. Solarno.

18 Any cross Mr. D'Allessandro?

19 MR. D'ALESSANDRO: No.

20 THE COURT: How about you from you, Mr. Shargel?

21 MR. SHARGEL: No, sir.

22 THE COURT: You are excused. Have a good day.

23 Anything further from Ms. Irving?

24 MR. SOLANO: Yes. May I come up.

25 THE COURT: Yes.

1 (The following took place at side bar)

2 MR. SOLANO: There is a stipulation that I want to
3 read into the record, two other pieces of evidence, one of
4 which is the pass book that is in the Court's possession. I
5 believe I would just like to show it -- the stamp of the 11th
6 and 18th. I believe, I referenced it.

7 THE COURT: You an exhibit? Passport?

8 THE CLERK: Oh.

9 MR. SOLANO: I intend to read the stipulation and
10 then show the jury the certificate that she is on jury duty
11 from 11 to the 12th and the passport.

12 (End of side-bar)

13 (Continued on next page)

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1 (The following took place in open court)

2 MR. SOLANO: May I read the stipulation, Your Honor?

3 THE COURT: Yes.

4 MR. SOLANO: It is hereby stipulated and --

5 THE COURT: Skip the preliminary. Just read the
6 facts of the stipulation.

7 MR. SOLANO: Irving Defense Exhibit 15. I'm sorry.
8 Irving Defense Exhibit 14 is a certified jury certificate and
9 is a true and accurate record of Arienne Irving's jury service
10 on June 11, 2008 and June 12, 2008 in the New York County
11 Criminal Court.

12 THE COURT: Okay. That is received.

13 (Arienne Irving Defendant Exhibit 14 received and
14 marked in evidence)

15 MR. SOLANO: Irving Defense Exhibit 15 is Arienne
16 Irving's official United States passport which reflects travel
17 to Ireland on July 11, 2008 and return to the United States on
18 July 20th, 2008.

19 THE COURT: Received.

20 (Arienne Defendant Exhibit 15 received and marked in
21 evidence)

22 MR. SOLANO: If I can just turn to the appropriate
23 pages, Your Honor.

24 THE COURT: Sure. Go right ahead. Okay.

25 The exit stamp.

1 MR. SOLANO: Yes, it is entry back in the U.S.

2 THE COURT: Got it. All right.

3 MR. SOLANO: I have nothing further, Your Honor.

4 THE COURT: All right. Ms. Irving rests?

5 MR. SOLANO: Yes, she does.

6 THE COURT: Government rests?

7 MR. D'ALESSANDRO: Yes, Your Honor.

8 THE COURT: Mr. Simels rests?

9 MR. SHARGEL: Yes.

10 THE COURT: All right. Well, I already told you the
11 plan. We will put our heads together on the jury charge and I
12 really don't want to break up the summations over a couple of
13 days, so you get tomorrow off. Somebody asked whether you
14 have to go to work, yes, you got to go to work. At least I'm
15 not telling you can't. Put the case out of your heads. All
16 right. Don't talk about it. Don't go looking for information
17 about it, don't go online gathering up information about
18 anything, even tangentially related to what you heard
19 testimony about. I want you to remain quarantined in terms of
20 information available to you, the evidence on which you will
21 base your verdict. So I don't want outside information
22 tainting you.

23 We will begin promptly at 9:30 on Monday morning.
24 First order of business for you would be I will have one or
25 two minutes of instruction for you, and then, you will hear

1 summations, and it will likely take the whole day. I am not
2 certain it will. After that I will charge you on the law, and
3 it's only after that, that it will be appropriate for you to
4 discuss the case among yourselves. So you won't do that. You
5 will follow my instruction not to discuss the case. So you
6 have four days off which I think is a good thing, and you'll
7 come back, hear summations and we will complete the rest of
8 the trial.

9 All right. Safe home. Have a nice rest of the we
10 weekend and we will see you on Monday morning.

11 All rise. Good night, ladies and gentlemen.

12 (Whereupon, the jury exited)

13 THE COURT: Is it useful to give you the evening to
14 exchange, if you haven't already, the theory of the case,
15 charges? If that is going to maybe bear fruit on an agreed
16 upon, at least to some extent -- not saying you have to agree
17 on everything, but to some extent, if you agree upon charges,
18 I think that's a good thing and might bear fruit in that
19 regard and my inclination would be to have you submit what you
20 agree upon and what you disagree about first thing in the
21 morning and then come back. I think if you come back at,
22 like, two o'clock I'll give you a proposed charge and we'll
23 convene at 2:45 for a charge conference. If it is really not
24 going to be that useful, I would just as soon you tell me that
25 and I'll go to work on it now, and we will not wait until

1 tomorrow to hear back from you.

2 MR. SHARGEL: My suggestion is that we start in the
3 morning. I think that it might be an empty exercise. The only
4 thing that I was anticipating was that the government -- and I
5 know that they've been busy and I've been busy, but that we
6 were going to get from the government what their proposals
7 were and in answer to Your Honor's question about which
8 sections of 1512 are really in play and what their theory of
9 prosecution is with respect to each of the counts in the
10 indictment. I don't have that yet. So my point is that I
11 think it would be better -- if I may suggest -- that we
12 convene in the morning, if it fits with Your Honor's schedule.

13 THE COURT: Well, I'm probably not going to convene
14 in the morning because I want to give a little more thought to
15 the charge, especially if I don't have joint input. I'm going
16 to do theory. I want to tell jurors specifically -- I am not
17 talking about anything lengthy -- with respect to each charge
18 the government alleges that this -- that the defendants did
19 this in that they gave -- offered Selwyn Vaughn money,
20 whatever the case may be. I'm not going to foist the defense
21 theory on you. If you want to include it, get it to me.

22 MR. SHARGEL: I do want it included but wouldn't it
23 make sense for me to see what the government's theory is.

24 THE COURT: It might make sense but I don't see why
25 that a necessary condition.

1 MR. SHARGEL: I will get it to you by mid morning.

2 THE COURT: If you don't know what the theory is now

3 -

4 MR. SHARGEL: I think I do. I think you heard it
5 several times but I will get it to you by mid morning in
6 writing.

7 THE COURT: So let me tell you that -- get it to me
8 by ten o'clock in the morning whatever it is you want in that
9 regard and I'm going to try to do what government's
10 allegations are and if I get a defense request I will consider
11 it. If it is based on the evidence, I think are you entitled
12 to it, then you get it.

13 MR. SHARGEL: Very well.

14 THE COURT: I'll see you at -- probably roll it back
15 a little bit. Why don't you come by at one o'clock. You will
16 get a copy of the charge and we will do a charge conference at
17 two o'clock.

18 MR. SHARGEL: At this time I renew my Rule 29
19 motions at the end of the entire case and move under Rule 29 A
20 for a judgment of acquittal, for the reasons I stated at the
21 end of the government's case.

22 THE COURT: And your motion to renew as well?

23 MR. SOLANO: They are, Your Honor. Specifically, I
24 want to point out one other point. With regard to the Leslyn
25 Camacho bribery count, I think now after hearing Mr. Simels

1 testimony as well, there is absolutely no evidence at all in
2 regard to that bribery count, so I want to at least consider
3 or reconsider the count in respect to that charge.

4 THE COURT: Denied. You will raise it again, should
5 the jury find the defendant guilty of that charge.

6 Okay. Anything else we need to do tonight?

7 MR. D'ALESSANDRO: A few points, Your Honor. For
8 the record, we would -- I believe we put the T3 in as at 1000
9 and we would, obviously, mark the government -- the
10 stipulation as -- excuse me, the transcript as 1000 T.

11 More importantly on that issue, there's a concern
12 that the government has that the jury may be left with a
13 misimpression about the Title III in that there is some reason
14 why they didn't hear it beforehand. What we propose, and this
15 goes in -- I think, Your Honor described as the thinking out
16 loud category -- we would request that Your Honor instruct the
17 jury that the recording was previously excluded. Based upon a
18 motion made by the government during the trial it was
19 permitted into evidence.

20 MR. SHARGEL: I object to that.

21 THE COURT: Put it in writing. We will deal with it
22 at the charge conference.

23 MR. FODEMAN: Thank you Judge.

24 MR. D'ALESSANDRO: Just to get the timeline, by ten
25 o'clock in the morning we will present the government's theory

1 of the case and convene by one?

2 THE COURT: Yes.

3 MR. SHARGEL: What time do you want us to be here,
4 Your Honor?

5 THE COURT: It will be available at one. Two o'clock
6 to actually meet for the charge conference. You'll have a
7 chance to read it.

8 MR. SHARGEL: Two o'clock. Very well.

9 THE COURT: Good night.

10 Could I trouble you to gather up all the exhibits in
11 the 3500 material that you provided for me. I'm grateful, but
12 you can take it away now. Just leave my transcripts. Thank
13 you.

14 (Proceedings adjourned as above set forth)

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